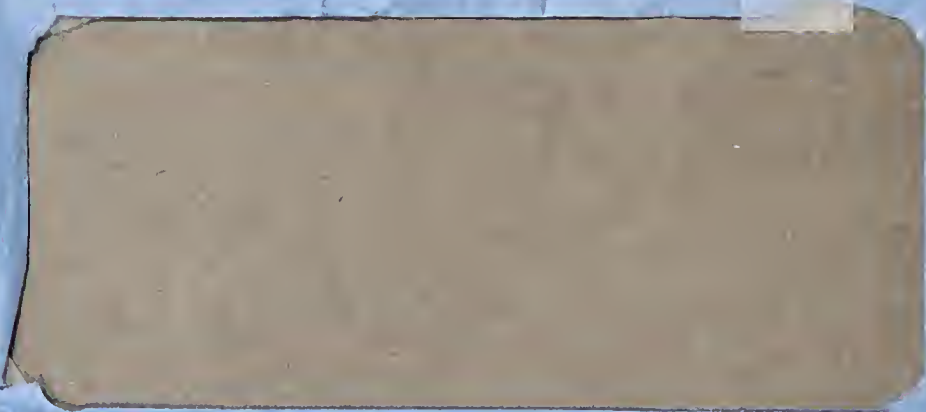


THE LAW OF REAL PROPERTY
AND
THE ASSESSOR

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ASSESSMENT TRAINING PROGRAMME
ASSESSMENT PRINCIPLES COURSE

THE LAW OF REAL PROPERTY
AND
THE ASSESSOR

LESSON TWO

Prepared By
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ONTARIO MINISTRY OF REVENUE
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PREFACE

This paper is for instruction purposes only. By no means should it be taken as authoritative on what is a most complex and important area of law.

For a more reliable view reference should be made to members of the legal land law. As well, the reader should not consider this study as reflecting Ministerial or Divisional policy or point of view on the subject matter contained herein.

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INTRODUCTION

(1) Scope of the Subject

This particular consideration of the law of real property has been divided into four divisions. The first deals with a man's rights over his own property (corporeal hereditaments), the second with his rights over his neighbour's land (incorporeal hereditaments), the third with the condominium concept, and the fourth with provisions supplementary to these rights, such as the registration of rights in land.

Division I - Corporeal Hereditaments

The first division of the study gives an account of tenures and estates. A tenure is a set of conditions upon which an estate (or interest) in land might be held. The main subdivision of tenure is into freehold, leasehold and crownhold. An estate (or interest) prescribes the length of time for which a person is entitled to land. Consideration is then given to Law and Equity, the two systems of justice which for many centuries have operated side by side, together with the difference between legal estates (the estates recognized by the Law) and the corresponding equitable estates. Future interests are dealt with next, and the rules governing what future interests may be created are discussed. The next section deals with co-ownership, which arises when two or more persons are simultaneously entitled to land. The art of transferring interests in land (or conveyancing) completes the first division of this consideration of real property law.

Division II - Incorporeal Hereditaments

The second division of the study concerns a man's rights over his neighbour's property (i.e. incorporeal hereditaments). These are inheritable rights in land not accompanied by physical possession of the land. The most important of these rights are easements and mortgages or charges. An easement is some right over a neighbour's land such as a right of way. Mortgage or charges are arrangements whereby a creditor lends money to a property owner and in return, to secure payment of the interest and repayment of the loan, receives certain rights over the land, such as the right to sell it, should the borrower default.

Division III - Condominiums

The third division provides an excellent opportunity for a review of many of the concepts involved in real property law. In the Canadian context, the condominium is a relatively new innovation which includes not only two types of tenures and estates, but also combines aspects of both corporeal and incorporeal hereditaments. There are a number of special features inherent in the condominium which provide unique problems to the assessor.

Division IV - Registration

The fourth division deals with the registration of title and extends into both the establishment of ownership and encumbrances. A distinction is made between the two systems of recording the ownership of real property in Ontario, one system coming under the Land Titles Act and the other under the Registry Act.

Glossary of Terms

At the end of the study a list of the legal terms used is included to provide a quick reference which the user may find of value.

List of Cases

Also included as a guide to the Assessor are a list of cases which are relevant to real property as it relates to the assessment function.

Bibliography

(2) Assessment and Real Property Law

A common definition of Assessment is that it is the valuation of real property for taxation purposes; therefore, an assessor is a government official who values real property for taxation purposes and, of course, the tax involved is the real property tax. Therefore, every way he turns, the Assessor comes into contact with the term real property. His work is intimately involved with this term. Therefore, as real property is governed by a body of rules and regulations called Real Property Law, it is important for the truly professional assessor to have a knowledge of this law.

It is not intended that the Assessor should become an expert in any field of law, except Assessment Law. He should leave legal expertise to those in the legal profession.

The purpose of this paper is to acquaint the Assessor with a few aspects of the Law of Real Property so that he may gain some familiarity with the terminology involved and it is hoped stimulate him into further research of his own. This paper is in no way meant to be a full study of the Law of Real Property. It is written with the Assessment function in mind and covers only a few points of land law which are felt to have special significance for the Assessor.

(3) What is Real Property?

The first question that may come to mind in discussing real property is simply--What is real property? The term 'real property' has come down from feudalism and includes land (with the buildings on it and water on or under the land), tenements (which include anything that may be held by a tenant), and hereditaments (which are inheritable rights to property). Land in feudal times was regarded as an entirely different thing from chattels, because it could not be taken away, stolen or destroyed. It was something which had always been there and so was considered real property. Chattels, on the other hand, were movable objects such as cattle or plows, and became known as personal property.

For a definition of real property in the assessment context one must look to legal statutes and their interpretation in the courts. Since 1850 The Assessment Act has contained a clear definition of real property, which is now set forth in The Assessment Act 1968-69 under Section 1, Subsection (k) as follows:

- (k) "land", "real property" and "real estate" include,
 - (i) land covered with water,
 - (ii) all trees and underwood growing upon land,
 - (iii) all mines, minerals, gas, oil, salt quarries and fossils in and under land,
 - (iv) all buildings, or any part of any buildings, and all structures, machinery and fixtures erected or placed upon, in, over, under or affixed to land;
 - (v) all structures and fixtures erected or placed upon, in, over, under or affixed to a highway, lane or other public communication or water, but not the rolling stock of a transportation system.

The Assessor must be aware that this section, as well as almost every other section, demands certain interpretations and he must, therefore, look to the case law to give any real knowledge of what is actually meant.

One of the obvious elements of real property which concerns the Assessor is land. He is accustomed to talking about lot sizes either in terms of frontage and depth in feet, or he may speak of acres. Although this may be a good starting point in a discussion on land, measures of dimension include only a part

of what the law means by land.

In the first place, if land had only length and depth it would be of little use, as agriculture requires depth of soil and, of course, man needs air-space to move. Thus for practical purposes land can be thought of as having volume and thus having length, breadth, depth and height. The big question then to be decided by law is how high and how deep. It was held in Lacroix v. The Queen (1954), that air and space were not susceptible to ownership, but this did not prevent the surface owner from use and enjoyment, such as putting up buildings. However, he had no right to expropriation compensation merely because the air space over his land was used as a flightway by aircraft taking off and landing at an adjacent airport. On the other hand, it was held in Kelsen v. Imperial Tobacco, (1957) that the air column above a building passes with a transfer of the property, and that a sign which protruded into the air space from an adjacent three story building must be removed.

A further principle which is of the utmost importance to the Assessor is that whatever is attached to the land becomes part of the land. This means that plants etc., which are put into the earth become part of the land. In the same way, crops and trees, which are ordinarily thought of as objects in themselves and which can become personal property when detached from the land, are, when attached to it, real property. Houses and any buildings erected on land become part of the land. Although a building is part of the land on which it is built, it is possible to divide it, not only vertically, into semi-detached houses for example, but also horizontally into apartments each of which can be held either by a tenant under a lease, or now, because of recent legislation, by an owner in fee simple as provided in The Condominium Act.

For the Assessor, the most difficult questions arise in connection with fixtures. The most important question is--What is a fixture? In case law it has been well established that a fixture is something which is attached to or simply placed on the land with some degree of permanency. A number of cases are cited here to illustrate the various decisions that Assessors use as guides in determining assessability.

In the first case to be considered, Northern Broadcasting v. The District of Mountjoy (1950) the point of issue concerned the assessability of a transformer and transmitter, both of which rested on the floor of a radio broadcasting station building on leased land. Two issues arose in the case. The first question was whether or not the transformer and transmitter were machines (or fixtures). A general rule as to whether a thing is to be regarded as a fixture or not depends upon two principles, the purpose (i.e. why) of its annexation and the degree (i.e. how) of its annexation. Each case must be decided on its own facts in the light of the principle. Secondly, assuming that they were found to be fixtures or machines were they erected, placed upon, in, over, under, or affixed to land and thus part of real property which is taxable under the provisions of Section 1 (k) (iv) of The Assessment Act.

The court felt that the transformer and transmitter fell within their definition of machinery which specified that the apparatuses should be instruments which were employed either to transmit force or modify its application. It was also concluded that the two articles in question could be treated as part of assessable real property because they were heavy articles each placed in one particular spot (i.e. fixed) with the idea of remaining there so long as they were to be used for the purpose for which they were brought upon the premises.

In another case, Metropolitan Toronto v. Eglinton Bowling Ltd., (1952), the test applied appeared to revolve around whether or not the bowling alleys in question were intended to remain in a particular spot so long as they were used for the purpose for which they were placed upon the premises (that phrase again!). It was felt that there was little doubt that the intention of the owners was to maintain the bowling alleys in the particular place and position where they were installed. While it would have been possible as a structural operation to move the substructure of the bowling alley it was considered as unlikely during the period of its usefulness and it was therefore held to be land for the purposes of assessment. Thus, in the case of Fess Oil Burners Ltd. v. Mutual Investments (1932), there needed to be only a slight attachment (i.e. by pipes and wires) between a furnace and a building for the furnace to be deemed a fixture. The decision was made in this way because it

was felt that there was a beneficial use to the land and buildings to which the furnace was annexed.

On the other hand, gas stoves and electrical refrigerators installed in an apartment were held not to be fixtures (and thus not assessable) in Allan et al v. Lavine et al, (1941) because they are not attached to a building. This is in accordance with a general rule whereby more emphasis is placed on the reason why an object is attached rather than how an object is attached to land. Nor was a gantry crane considered a fixture in Re Ford Motor Co. of Canada and Town of Ford City, (1929), because it was not considered to have been installed to improve the land, but for its own operation. In this latter case, the court decided that even if the crane had been a part of real property, it was actually machinery which was being used for manufacturing and thus exempt under the then Section 4 (17) of The Assessment Act.

Thus the Assessor must look at two things when trying to decide whether or not an object is a fixture - first, the reason for its being put on the land, and second, the degree of permanency. It is also to be remembered that, if the Assessor decides that the object is a fixture and assessable, the onus is on the person assessed to prove that it is not a fixture and thus not assessable as real property.

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Division I - Corporeal Hereditaments

Corporeal hereditaments are a man's rights over his own land. In general, these are inheritable rights to property which are accompanied by physical possession. In contrast, the incorporeal hereditaments discussed in Division II, are inheritable rights to property which are not accompanied by physical possession. A corporeal right implies full and exclusive possession and use of the property within the limits of the deed or instrument which established the right. Incorporeal rights are those which include easements and mortgages: they do not carry with them legal title to the property, but merely indicate the use that one person or the property owner, may make of land belonging to someone else.

(1) Tenures and Estates

The first type of corporeal right to be discussed is tenure which is the set of conditions upon which an estate or interest in land may be held. Another type of right associated with real property involves the estate. An estate or interest prescribes the length of time for which a person is entitled to land. It is possible for each type of tenure right to be subdivided according to estate right. In British real property Law, modern tenures can be divided into three types¹:

- (a) Freehold
- (b) Leasehold
- (c) Crownhold*

An estate under freehold tenure is one that continues forever, or for the life (lives) of one or more individuals.

An estate under leasehold tenure (or one which is less than freehold) is one that continues for a period which may be longer or shorter than one person's lifetime depending on the length of a lease.

Finally a new tenure, designated by Megarry as crownhold, is used to denote land which has been compulsorily acquired by the Crown and regranted subject to statutory restrictions. An Ontario equivalent of this type of tenure occurs in

¹See Megarry's Manual of the Law of Real Property p.13.

* The term Crownhold is a British legal concept, which has analogous equivalents in Ontario.

THE RELATIONSHIP BETWEEN TENURES AND ESTATES

<u>TENURES</u> (Conditions of Holdings)	Freehold		Leasehold	Crownhold
<u>ESTATES</u> (Length of Time)	Fee Simple	Fee Tail	Life Estate	<div>Estate for Years</div> <div>Tenancy from Year to Year or from Month to Month</div> <div>Tenancy at Sufferance</div>
	Virtually forever	Life of Descendants	For Life	
			<div>Fixed Term Certain Duration</div> <div>Fixed Term May be Changed to Certain Duration</div> <div>Uncertain Term Uncertain Duration</div>	

conjunction with land leased by the Ontario Housing Corporation through its H.O.M.E. (Home Ownership Made Easy) plan.

To summarize, tenure denotes conditions under which an estate or interest in land is held. An estate refers to the length of time of the tenure agreement. The forms of tenure and estates and the relationships among them are set out in Table I.

(a) Freehold Tenures

There are three types of estate associated with freehold tenures (one of which is no longer permitted in Ontario land law):

- (i) Fee Simple
- (ii) Fee Tail Estate (abolished)
- (iii) Life Estate

(i) Fee Simple Estate

The highest form of estate in real property is the fee simple estate.² It gives the holder an absolute right in the land subject only to the limitations imposed by the government. This type of estate is independent of time limitations, since the owners and the heirs may enjoy its use forever. The holder of a fee simple estate may, however, restrict or even alienate his rights to the estate by acts contrary to the law of the land, or by his failure to act (i.e., such as when he does not pay his real property taxes or mortgage payments). The non-fulfilment of either of the latter obligations could lead to sale or foreclosure respectively.

(ii) Fee Tail Estate

This type of estate is of historical interest only having been abolished in Ontario in 1956. The fee tail estate could be passed down to no one except the direct

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The word fee is derived from the old word fief and implies that the estate is held from some superior lord in much the same way as under the feudal system. Thus, real property of all British subjects is supposed to come from the sovereign or the Crown. The owner is thus really a holder having use of the land and not absolute ownership.

descendants of the original owner. Since this type of estate restricted the alienation of property, it has been abolished in almost all the provinces in Canada.

(iii) Life Estate

A life estate gives the tenant full power to use and control the real property as long as he lives, but then after death his interest is terminated. It is also possible for a person to hold a life estate which is measured by the life of another person. This type of life estate, however, is quite rare. The more usual life estate, for the life of the person to whom the interest is given, often arises under the terms of a will. Thus, the owner of a fee simple estate may by the terms of his will give a life estate in the family home to his wife; or, if he is a widower, he may give a life estate to his elder son. In either of these situations he may also direct that the fee simple pass, let us say, to his grandchildren.

The fee simple, after a life estate has been carved out, is called either a reversion or a remainder. It is called a reversion when the grantor of the life estate reserves the balance of the fee simple for himself and his heirs (that is, it reverts to the grantor or his heirs after the life estate ends). It is called a remainder when it goes to some third person. As they are a special type of life estate reversions and remainders will be discussed again in greater detail in Part (3) of this Division under Future Interests.

Dower is a life estate to which a widow is entitled by operation of the law (see The Dower Act, R.S.O. 1970, amended 1971)

Essentially dower is the right of a wife to a life estate in one-third of her husband's lands at the time of his death. As far as her husband's property is concerned a wife does not lose her dower right should her husband sell or mortgage his interest. Before he dies she is said to have a Future Interest. This ripens into a life estate on his death, (obviously, if she dies before him, she will get nothing). It is therefore necessary to obtain a bar of

her dower rights from the wife, when a husband is selling or mortgaging his estate. If this is not obtained the purchaser or mortgagee, as the case may be, may find himself having to give up a life estate in one - third of the property at some time in the future.

Curtesy is the right of a husband, at the time of his wife's death, to a life estate in all lands which she owned during the marriage. Unlike the wife's right to dower, the husband's right to curtesy may be defeated by the wife disposing of her property by either deed or will. Curtesy is similar to dower except that it applies to a surviving husband who is entitled to a life estate in his wife's property provided that there is a child born alive during the marriage. (See Section 29 of The Conveyancing and Law of Property Act and Section 29 (1), (2) of The Devolution of Estates Act.)

In conclusion, it is important for the assessor to remember that holders of life estates (like holders of fee simple estates) are treated as owners.

(b) Leasehold Tenure

Leasehold tenure gives an occupant contractual rights to occupy land, in return for which rent is nearly always payable. As in freehold estates, leaseholds create interests in land which may last for either a specified or uncertain period of time. Only in the case of leaseholds does there now arise the relationship between landlord and tenant which was of such importance in feudal times. For this reason the term tenure that is less than freehold is

sometimes used as a synonym for leasehold. In a leasehold estate, the person to whom the interest is granted is called the lessee or tenant, and the grantor of the interest is called the lessor or landlord. In this section, tenant means a person who rents property and should not be confused with tenure which refers to a set of conditions upon which an estate or interest in land may be held.

(1) Leasehold Estates

Three types of estates are found under leasehold tenure:

- (i) Estate for Years
- (ii) Tenancy from Year to Year or Month to Month
- (iii) Tenancy at Sufferance or at Will

(i) Estate for Years

This type of leasehold estate is for a specific period of time or term set out in the lease. The tenant holds the land for a fixed term of certain duration (as under a lease of 10 years). The basic conception is one of certainty of duration in the absence of steps being taken for extension or curtailment.

(ii) Tenancy from Year to Year or Month to Month

A lease of land from year to year, with no other provision as to its duration, will continue indefinitely unless either landlord or tenant takes some step to determine it. This simply means that the duration of the estate depends upon the provisions stipulated in the lease, and depending on these terms the estate may be terminated any time after one month or one year. Thus either party can give notice to terminate the lease at the end of the term of the tenancy.

(iii) Tenancy by Sufferance

This type of leasehold estate is for an uncertain period and is of uncertain duration. It may continue indefinitely or may be terminated by either party at any time. Tenancy at

sufferance arises where a tenant, having entered upon land under a valid tenancy, continues to occupy the land after the lease expires. The tenant continues to compensate the landlord for the right to use the property. The tenancy may be terminated at any time, and may be converted into a yearly or other periodic tenancy.

(2) Leasebacks

In Great Britain, it has long been common practice for the owner of a fee simple to grant a long-term lease, whereas in similar circumstances in North America he would sell the fee simple outright. Several factors have contributed to this difference, but perhaps the main one is the strictly limited amount of land available in Great Britain.

In North America, the supply of land no longer appears limitless; This is particularly so in and around large cities. For these reasons the use of relatively long-term leases of commercial properties has grown rapidly throughout North America. An established company with a good record of earning is often able to arrange with a financial institution, usually an insurance company, to finance its acquisition of a new building by a long-term leasing device known as a leaseback which forms part of a larger transaction. The business and insurance company arrange the entire transaction in advance. First, the business obtains a short-term loan, usually from a bank, to finance construction of the building. As soon as the building is completed, the business sells it to the insurance company and pays the bank loan. The insurance company then leases the building back to the business. Many leases are for a period of twenty

or twenty-five years, with the lessee business receiving an option to renew for two or three additional five year periods. The lessee business acts very much as the owner of the property rather than as a tenant, paying for all repairs, maintenance, insurance, and property taxes during the currency of the lease.

(3) Who is Liable to Pay the Taxes Under a Lease

In practice, all tenants pay taxes if not directly then through their rents. In Ontario there is no implied covenant that the tenant will pay the taxes on the real property he has leased; but a lease under The Short Form of Leases Act very often includes a covenant that the tenant will pay the real property taxes. As a general rule, in the absence of an agreement which says otherwise, the owner or landlord is liable for all taxes on the property. If the tenant does agree to pay the taxes and then refuses to do so, the landlord must pay and his only recourse would be to sue the tenant for the amount of the taxes.

(c) Crownhold Tenure

A simple definition of crownhold tenure is that it denotes land which has been granted or leased by the Crown subject to statutory restrictions or restrictive covenants³ regarding its use.

3 There is a further discussion of restrictive covenants in Division II under Incorporeal Hereditaments.

Section 3 para. 1 of The Assessment Act exempts from taxation all Crown lands or property belonging to Canada or any Province. Notwithstanding that fact, Section 26(1) provides that a tenant of land owned by the Crown or in which the Crown has an interest, is liable to assessment in the same way as if the land was owned or as if the interest of the Crown was held by any other person.

Assessment
of Crown
Lands

26.-(1) Notwithstanding paragraph 1 of Section 3, the Tenant of land owned by the Crown where rent or any valuable consideration is paid in respect of such land and the owner of land in which the Crown has an interest and the tenant of such land where rent or any valuable consideration is paid in respect of such land shall be assessed in respect of the land in the same way as if the land was owned or the interest of the Crown was held by any other person.

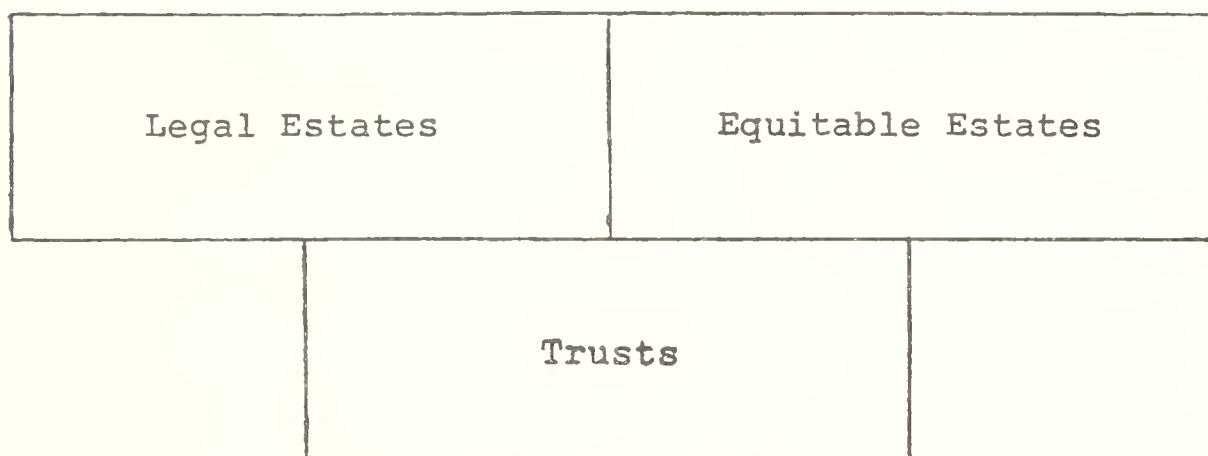
(a) For the purposes of this subsection.

(i) "tenant" in addition to its meaning under Section 1, also includes any person who uses land belonging to the Crown as, or for the purposes of, or in connection with, his residence, irrespective of the relationship between him and the Crown with respect to such use,

- (ii) "residence" means a building or part of a building used as a domestic establishment and consisting of two or more rooms in which persons usually sleep and prepare and serve meals,
- (iii) "rent or any valuable consideration" shall be deemed to have been paid, in the case of an employee using land belonging to the Crown as a residence, where there is a reduction in or deduction from the salary, wages, allowances or emoluments of the employee because of such use or where such use is taken into consideration in determining the employee's salary, wages, allowances or emoluments.

In Britain this type of situation is known as a crown-hold tenure. In Ontario a similar concept is found in public housing, leases of Crown land for cottages, and (more recently) in association with land assembled for home building purposes by the Ontario Housing Corporation. In the latter case, home owners lease their land from the Crown, but pay taxes on it as tenants.

LAW AND EQUITY



(2) Law and Equity

Estates may be classified as either common law or equitable. This distinction has arisen from the methods of the law to protect the rights of the individual. Legal rights are enforced by a court of law and equitable rights by the chancery courts. It used to be that these would be held as two different courts, however, the common law and equity courts were amalgamated in Ontario in 1881 by what are called The Judicature Acts. Essentially, the court decides in each case whether the legal rules or the rules of equity apply. Legal decisions naturally involve the use of the law handed down by statute or case law. In equity decisions, however, fairness is the key rather than the strict interpretation of the statutes. Under the court of equity, a whole body of rules and regulations have been developed which must be applied to any case wishing to be resolved under equity.

A legal interest in land is a right in the land itself, so that whoever acquires the land is bound by that right, whether he knows of it or not. Equity, on the other hand, can enforce equitable rights only against certain persons.

It should be added that the growth of this duality of ownership, legal and equitable, was a long drawn-out affair. This duality is the basis of modern law of trusts. The terminology used to create an equitable estate in Ontario is to grant 'unto and to the use of X and his heirs in trust for Z and his heirs'. X will have a legal estate in fee simple. He is called the trustee. Z is entitled to the benefit of the lands and has an equitable estate in fee simple.

The concept of trusts and their relationship to assessment will now be discussed.

(iii) Trusts

Oftentimes property is owned nationally by an incorporated organization but given to the exclusive use of the local body. In other instances the local chapter owns the property while the national organization has no interest in it. In these cases if the local group is not incorporated the group itself cannot own the property. The group then must vest the ownership of the property in the hands of people who will represent the group and legally administer it. These people are called trustees and have all the rights of owners just as if they in fact owned the property. The trustees are the recipients of all the tax and assessment notices. A trustee is simply a person who holds and administers a property for the benefit of someone else. By our definition of a trustee, you will note that a trustee could also be administering a property for a deceased person and his heirs in which case he is also called an executor.

Trusts are mainly described according to the purpose for which they are created. A testamentary trust is created under the terms of a will. The property owner leaves his property for the beneficiaries named in the will. A living trust is one in which the owner transfers his legal ownership to a trustee while he, the owner, is still alive. In most cases, the owner still gets the benefits from the property, but on his death, these will go to his heirs or beneficiaries. The important point here for Assessors is that the legal ownership is in the trustee, and he must be shown on the assessment roll as the owner and also as the trustee.

Section 24(8) states that:

Land held by a trustee, guardian, executor or administrator shall be assessed against him as owner or tenant thereof, as the case may require, in the same manner as if he did not hold the land in a representative capacity, but the fact that he is a trustee, guardian, executor or administrator shall, if known, be stated in the roll, and such trustee, guardian, executor or administrator, is only personally liable when and to such extent as he has property as such trustee, guardian, executor or administrator, available for payment of such taxes.

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FUTURE INTERESTS

Reversion	Remainder
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Future Interests

If the owner of an estate in land creates one or more particular estates out of his own estate, the residue of his original estate which he retains is known as a reversion. Thus if a person who holds an estate in fee simple grants a life estate or a lease for a term of years, the fee simple which he retains is a reversion. If, on the other hand, the owner of an estate creates a particular estate and by the same instrument disposes of some or all of the residue of his estate to one or more persons, the interests of those other persons are not reversions but remainders. In the case of a reversion, the land reverts to the grantor when the particular estate terminates: in the case of a remainder, it reverts from him for the benefit of some third party. It follows that while there may be many remainders created out of an estate, there can be but one reversion.

(i) Reversion

If an owner has given his ownership rights to someone for a number of years, or even for life, or until a certain event happens, when these rights are given back to the owner, this is a reversion. While the owner is waiting for the return of the estate, the only right that he has in the estate is the right of reversion. If A grants to B a life estate with reversion to A, then upon the death of B the ownership of the property will return or revert to A. This type is called a definite reversion because it is certain that B will die at some future date. A definite reversion can be sold or given to someone else. An indefinite reversion is one where there is a possibility that the right to ownership may never return to the original owner. For example - if A, the owner, gives his property to B for a specific purpose, with the stipulation that the property would revert to A if the purpose of the transfer was not carried out. This type of reversion is, thus, only a possibility depending

on the grantee violating the terms of the transfer and, therefore, creates only an indefinite estate which cannot be sold or assigned.

(ii) Remainders

A remainder is a deferred estate which goes to someone else other than the original owner. E.g., A grants to B for life then to C in fee simple. In the example above, C has the right to the remainder. A remainder may be definite as to the amount and to the time, but it does not become effective until the previous estate is completed. It must be remembered that a remainder differs from a reversion in that a reversion goes back to the original owner, whereas, a remainder always goes to a third party. A remainder can either be vested or contingent. A vested remainder is an estate which is definite where only the possession is deferred. When A grants to B for life, remainder to C, there is a vested remainder in C; since B must die, thus C may sell or assign his right of remainder before he actually takes possession of the property. In a contingent remainder, it is necessary for some stipulated event to occur before possession or title can pass to the remainder man. If this event does not occur, no rights may ever come to the remainder man at all. This type of remainder is much like an indefinite reversion and cannot be sold - e.g. if a grant is made to A for life, with the remainder to B if he survives A, the remainder is contingent because the event is uncertain. If A dies first the remainder is vested; but if B dies first the estate upon the death of A reverts to the donor or his heirs.

CO-OWNERSHIP

Joint Tenancy
Tenancy in Common

(4) Co-ownership

Up to now, no consideration has been given to cases where two or more persons have been entitled to the simultaneous occupation of land. Two types of co-ownership situation are of interest to the assessor:

- (i) Joint tenancy
- (ii) Tenancy in Common

(i) Joint Tenants - If people desire to hold land as joint tenants, it must be so stated in the instrument creating their interest in the land; otherwise, by statute, the law presumes that it was intended that they should hold the land as tenants in common. This is perhaps not the case when a husband and wife take title to a property jointly. Although nothing is definitely stated regarding the tenancy, the presumption of the law is that they are joint tenants having the right of survivorship. However, to be sure even husbands and wives, when they wish to hold as joint tenants - not tenants in common - should have this stated in their instrument or deed. Joint tenancy occurs where two or more persons are deeded land in such a manner so that they all have one and the same interest, which begins at one and the same time, and the land is held by one and the same undivided possession. Thus, the four characteristics of joint tenancy are:

- (1) Unity of Interest
- (2) Unity of Title
- (3) Unity of Time
- (4) Unity of Possession.

Unity of interest means that each of the joint tenants must have exactly the same interest in the land as the rest; if one holds the land in fee simple - all the others must hold the land in fee simple. They, the joint tenants, must have the same title, meaning that their estate must have been created by the same instrument or deed as one grant. The rights to the estate must all have begun at

exactly the same time. To have unity of possession simply means that each tenant has an undivided interest in the whole property.

On the death of a joint tenant his share goes to the other joint tenants; he cannot leave his share to his heirs. If at any time one of the four characteristics of the joint tenancy is destroyed, this would then create a tenancy in common.

(ii) Tenancy in Common - In this form of tenancy both parties enjoy joint possession of the property in question, but they have separate and distinct titles. It is not necessary for the estates to have been created at the same time, nor do the interests or shares in the estates necessarily have to be equal; one may own two-thirds, the other only one-third. Yet, each tenant has as much right to possession of any part of the property as the other. Each tenant may sell his interest in the estate if he so desires and not affect the other tenant's rights--the estate simply carrying on with a new tenant replacing the old one. There is no right of survivorship such as in a joint-tenancy--meaning that on the death of one tenant his share in the estate does not pass to the other tenant but will go to his heirs. If he dies intestate (without a will) and without heirs his share will go to the Crown.

In Ontario if there is no contrary statement in the instrument conveying the property to two or more people, the law is clear that they are to hold the land as tenants in common. That is why when one is reading an indenture, it will often be written: To John Smith and his wife Alice as joint tenants and not as tenants in common.

An individual and a corporation must be tenants in common if they wish to hold land together. In Ontario, two corporations may hold land together either as joint tenants or as tenants in common. The Assessor, however, does not need to distinguish between tenants in common or joint tenants, (except when one dies) but simply as the case may be, between two owners, he enters them on the assessment roll showing them both as owners.

MULTIPLE OWNERSHIP

Corporate Ownership
Partnerships

5) Multiple Ownership

(1) Corporate Real Property

When we speak of corporate real property or corporate real estate, we simply mean land owned by a corporation. A corporation, which is an artificial legal entity, has the power to buy, sell or hold property for the conduct of the business of the corporation. The Oxford dictionary definition of corporation is a 'united body of persons, especially one authorized to act as an individual: artificial person created by charter, prescription, or act of the legislature comprising many persons (aggregate) or one (sole)'. Thus a municipality may be spoken of as a corporation 'sole'. Any company whether limited or not but formed under the Ontario Companies Act would be a corporation aggregate. Usually a corporation can only buy or sell land in accordance with the statutory regulations imposed upon it by the province. In assessment, whenever a corporation is liable for taxation on real property, we must show on the assessment roll in the proper column a 'C', indicating that it is a corporation.

(11) Partnerships

Property held jointly by several persons for business purposes is also quite common. A partnership is an association of individuals who have joined together in pursuit of some objective. In business partnerships, this objective is mutual profit. While it may appear that the business partnership owns property, in actuality, each of the partners, equally with his associates, owns the assets of the business. The partnership itself does not own anything. Each partner is liable to the full extent of his personal fortune for all the debts of the partnership. Each is responsible for any liability his partners are unable to pay. There is no limit to the number of partners that may be involved. Unless a written agreement stipulates otherwise, each partner is a full and equal owner or tenant with all other partners. The chief difference between a corporation and a partnership is that a corporation is distinct from the persons who manage it. While the members of a partnership have unlimited liability the liability of the owners for the debts of the corporation is limited to the amount of their investment.

CONVEYANCING

Deeds
Secondary Conveyances
Agreement for Sale
Option to Purchase

Conveyancing

It is not easy to distinguish accurately between real property and conveyancing. In general, it can be said that the former is static, the latter is dynamic. Real property deals with the rights and liabilities of landowners, conveyancing with the art of creating and transferring rights in land. It is best to regard real property and conveyancing not as separate though closely related subjects, but as two parts of the one subject of land law.

(i) Deeds and Transfers

Deeds and transfers are very important to the Assessor because from them he can learn a great deal about any specific property (i.e., the correct ownership, the property description).

When the title to real property is transferred from one person to another this is done by the execution and deliverance of a deed or transfer. Both types of document are instruments in writing, which must be carefully drawn and executed, whereby one party gives his interest in real property to another party. The chief difference between deeds and transfers is that they are respectively associated with conveyancing of property in the Registry and Land Titles systems of land registry (these are discussed in more detail in Division IV under Registration). It is sufficient here to point out that what is said in the following discussion on deeds is also largely true for transfers. In any event both documents are included for comparison.

A deed is simply a type of contract, and therefore must satisfy the normal requirements of a contract to be valid. The grantor (in the Land Titles system the transferor) and the grantee (on a transfer the transferee) must have full legal capacity in order to make a contract (be of sound mind etc.) Consideration, as in all contracts, must be shown, but sometimes this is only a nominal value of one dollar. In these situations the deeds are not helpful in providing evidence of actual value.

There must be included in the deed a granting clause or operative words of conveyance, which show the intention of the grantor. There must always be, in the deed, a complete and accurate property description of what is actually being conveyed. The most common types of description would be either by a metes and bounds or plan and lot number. In addition to the physical description, the deed should include any appurtenances such as easements or rights-of-way that attach to the property. These property descriptions can be of very great use to the Assessor in making out his own property description for assessment purposes and also, in verifying that the descriptions he has are correct.

The deed must always be signed by the grantor and if the grantee is to give a mortgage, he will sign, execute and deliver this instrument on closing of this transaction. If the grantor is a company, the deed will be signed by one of the company's officers who is authorized to sign and he will place the corporate seal of the company on the deed. Then the deed should be witnessed in this signing by a third party, usually a lawyer or notary public.

The deed, however, cannot legally come into effect until it is actually delivered by the grantor to the grantee and the grantee accepts it. After he has accepted the deed, (or transfer) the grantee (or transferee) should at once register the instrument in either the Registry or the Land Titles Office.

(ii) Secondary Conveyances

In dealing with real property one finds other types of conveyances which are secondary or derivative. This means, the estate as originally created is enlarged, restrained or perhaps extinguished. The usual ones, you will find, are quit-claim deeds (or releases) and assignments.

(1) Quit-Claim Deeds

A quit-claim deed is used to clear a 'cloud' on a title (some minor doubt which should be cleared up). It is a

conveyance of a title in which the grantor releases to the grantee and his heirs and assignees being all right, title, interest, claim and demand at law and in equity, to a piece of property.

(2) Assignments

An assignment is properly a transfer of rights one has in an estate to another person. A mortgage lender (mortgagee) is permitted to transfer at any time his mortgage on a property by written assignment under the Registry Office System or by written transfer of charge under the Land Titles system. After an assignment, the assignee stands exactly in the same position as the original mortgagee, having all his rights against the mortgage borrower (mortgagor) and property.⁴

(iii) Agreement for Sale

This is a formal document by which real estate is sold at a price payable for periodic payments and with such interest rates as specified. It is in frequent use, particularly where the buyer makes but a modest initial payment and the seller does not wish to give to the buyer a deed and take a mortgage for the greater part of the price. The advantage to the seller of using an agreement of sale instead of a deed and mortgage is that usually the agreement provides that the vendor may take immediate possession in case the buyer makes default and no Court action is necessary to establish right of possession. It will be remembered that it might take at least six months to foreclose a mortgage.

It is usual to provide, in the agreement, that after a certain sum has been paid, a deed shall be given by the vendor who shall take a mortgage for the balance of the purchase price. Such an arrangement may be registered by either party. The registration protects the purchaser as it gives public notice of his interest.

⁴For a discussion of the Mortgage (or Charge) concept see Division II, Section 2.

If payments are not made according to the agreement, the vendor may either sue for the moneys due or bring an action for possession. The relevance of agreements for sale for the assessor may be found under Section 4(a) of The Municipal Act which states that a person in possession under agreement of sale is deemed to be the owner.

(iv) Option to Purchase

An option to purchase is a contract whereby one person agrees that another shall at some future day be entitled to purchase land on the terms set out in the contract giving the option. It is an offer to sell to be accepted by a certain specified date.

When the option is exercised, the contract is immediately converted into an agreement for sale, and the relation of vendor and purchaser is established. When this occurs the assessor has to revise the assessment roll accordingly.

D I V I S I O N II - S T R U C T U R E

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Division II - Incorporeal Hereditaments

Estates in real property are classified according to the property rights held by those involved. Basically these rights may be thought of as either incorporeal rights or corporeal rights. A corporeal right implies full and exclusive possession and use of the property within the limits of the deed or instrument which established the right. Incorporeal rights are those which include restrictive covenants and easements; they do not imply a legal title to the property, but merely relate to the use that may be made of the land belonging to someone else.

(i) Easement

(a) Introduction

To appreciate the position held by easements in the legal concept of land it is necessary first to examine some of the conditions under which land may be held at law.

There are certain natural rights which the law attaches to the ownership of land whereby the owner is allowed to enjoy his land fully. These rights pass with the land without specific mention required in any deed of conveyance.

These natural rights cannot be extinguished; they may be suspended by agreement or by statute. If the agreement is terminated, the statute repealed or action thereunder is abrogated, the natural rights revive.

The complex nature of society today requires that in addition to the general rights of ownership it shall not only be possible to acquire rights over land of another but also to limit these rights.

Inasmuch as these rights do not carry possession of land over which they are extended they are called incorporeal hereditaments, in contrast to actual estates or interests in land in possession which are corporeal hereditaments.

(b) Definition

An easement is an incorporeal hereditament. It is a privilege without profit, that is to say, it is a right

attached to one particular piece of land (the dominant tenement) which allows the holder of the easement either to use the land of another (servient tenement and servient owner) in a particular manner or to restrict the extent of its use to a particular degree. This does not allow the holder of the easement to remove its natural produce or soil.

(c) Characteristics of an Easement

(1) There must be a dominant and a servient tenement. An easement must be appurtenant or attached to land.

(2) No easement can be attached to the land of a dominant tenement unless it is beneficial to that tenement.

The law requires that no restriction should be imposed upon one tenement without a corresponding benefit arising from it to another.

If the right has no necessary connection with, nor is necessary to the full enjoyment of the land, then it is a mere contractual right.

(3) Dominant and servient owners must be different persons.

Once an easement has become attached to the land of the dominant tenement it endures for the benefit of each succeeding owner.

(4) A right over land cannot amount to an easement if the right is vague or uncertain, or if it is incapable of definition. In this case it may be enforceable as a covenant, but not as an easement.

(d) Varieties of Easement

In fact, the majority of easements can be classified under six main headings as shown below, but this does not limit all easements to such.

(1) Rights of way--the right of one landowner to pass over the land of another, whether for general or special purpose.

(2) Right of light--right that light flowing over adjacent land to a window shall not be obstructed.

(3) Right to air--similar to right to light.

(4) Right to water--usually coupled with the right of way to obtain water from another's land. Also covers such other rights as preventing others from entering and diverting a stream, to discharging water on to another's land or polluting such waters. (5) Right to support--of building of adjoining land or buildings, There is a natural right to support of land by adjoining land. Support to a building can only be acquired by easement.

(6) Right to fencing--this is the obligation of maintenance by an adjoining owner. A farmer's obligation is to keep his own cattle in, not to keep out his neighbour's. Such an obligation can only be created by easement.

(e) Restrictive Covenant Distinguished

A covenant is a promise contained in a deed (that is, under seal). The person to whom the promise is made (the covenantee) may enforce the promise against the promisor (the covenantor), according to the law of contract.

In order to determine whether a covenant is positive or restrictive a good test to apply is: does the covenant require the promisor to do something? If it does, then it is positive. A restrictive covenant is one that is negative. It requires the promisor to refrain from doing something.

As with easements, there must be dominant and servient tenements and the restrictive covenant must be for the benefit of the former. The covenant must 'touch and concern' the dominant tenement. A covenant not to do business on Sundays on certain premises would probably be regarded as a purely personal covenant, given on account of the covenantee's religious beliefs, and not one touching and concerning the dominant tenement.

There is some similarity between a restrictive covenant and negative easements. However, there are differences. The

former exists only in equity while easements may be either legal or equitable. Unlike easements, restrictive covenants cannot arise by implication or prescription. Certain negative rights, such as the right to have light unobstructed by your next-door neighbour could be obtained either in the form of an easement or a restrictive covenant.

(f) Acquisition of Easements

Acquisition falls into two main categories (1) acquisition by statute, and (2) acquisition by grant.

(1) Statute. There is little to be said on this except that for the purpose of an Act the name statutory easement may be given to a right which lacks the essential elements of an easement.

(2) Grant. Under this category we find three methods:

(a) Agreement: The creation of an easement by agreement is quite simple. It arises when an owner conveys in writing his permission for the limited use of his property, or part of it, by another.

(b) Implied Grant: The principle of this mode of creation is that although there has been no express mention of an easement in the grant of land, the common or presumed intention of the parties cannot be executed unless a particular easement is deemed to arise by implication.

(c) Prescription: When someone takes upon himself the right to use some other person's land and is not hindered from doing so by the owner for a stated period of time he gains a continuing right or in other words an easement. In Ontario this type of easement is acquired after an uninterrupted period of twenty years. Where rights have been acquired by such continuing uninterrupted usage, they are said to have been acquired by prescription. On the other hand, it is held that a transfer of rights by prescription can not be acquired if the land is registered under 'The Land Titles Act'. Once land is registered under this act, the 'title' is guaranteed by the Provincial Government and, thereafter, no one can acquire rights through

mere possession or use of the land.

The following general rules govern prescriptions:

(a) Where an easement has been enjoyed for twenty years before commencement of an action in which claim to the right is sought, user for that period will establish claim.

(b) Strict proof of use for the twenty years is required. It must have been an open, visible, uninterrupted exercise under a claim of right adverse to the owner.

(c) Once such proof is established it cannot be defeated by proof that it did not exist prior to the twenty year period.

(d) If proof is established that the right was interrupted, or that the interruption was submitted to or acquiesced in for one year after notice of the interruption then the right is non-existent.

(e) If use of land is based on an asserted right which is found not to exist, such use cannot be relied upon to establish an easement.

(f) An easement not arising out of a consent or agreement, enjoyed for forty years without interruption for a year becomes absolute and indefeasible by statute and cannot afterwards be defeated.

(g) Factors in Valuation of Easements

The Assessor must be aware of easements because if they are involved they may very easily effect the market value of the property in question. This is, of course, why Section 12(1) of The Assessment Act, 1968-9 reads as it does:

12(1) Where an easement is appurtenant to any land, it shall be assessed in connection with and as part of the land at the added value it gives to the land as the dominant tenement, and the assessment of land that, as the servient tenement, is subject to the easement, shall be reduced accordingly.

This section in The Assessment Act dealing with easements further states that for the purposes of the section of a restrictive covenant shall be deemed to be an easement. The Act speaks of an easement as 'appurtenant to any land'. This means that owner-

ship of such land carries with it some right to enjoyment over the use of other land. The land which is curtailed in its use is said to be subject to an easement. The land benefitting from an easement is known as the dominant tenement, while the land which is subject to an easement is known as the servient tenement.

Statutory Easements concerning hydro power lines, sewage pipes, oil lines, etc., usually arise out of statutory authority exercised either by compulsion or by prior negotiation and purchase. These easements usually entail:--

(1) Overhead wires, conductors or pipes carried across land by means of supports erected on the land.

(2) Wires, conductors or pipes across land but with no supports erected on the particular land.

(3) Underground conduction systems.

General--The usual method of arriving at value in these cases is to calculate the market value of the land in question before and again after the imposition of the easement. The difference represents the damages or the value of the easement.

The imposition of the easement may have the following effect:--

(a) There may be no calculable change in value of either dominant or servient tenement.

(b) The value of the dominant tenement may be enhanced without a corresponding depreciation of the servient tenement.

(c) The dominant tenement may be unaffected but the servient tenement depreciated.

(2) Mortgages or Charges

The second type of incorporeal hereditament to be discussed here is the mortgage or charge. The essential nature of a mortgage (or charge) is that it is a conveyance of a legal or equitable interest in property, with a provision for redemption, i.e., that upon repayment of a loan or the performance of some other obligation the conveyance shall become void or the interest shall be reconveyed. The borrower is known as the 'mortgagor' (or chargor), and the lender as the 'mortgagee' (or chargee) depending on what type of system the property is registered under.

(a) Distinction Between Mortgages and Charges

The assessor is mainly interested in mortgages on real property, rather than Chattel Mortgages which are usually taken as additional security on large construction projects, where the equipment such as stoves and refrigerators is financed through the proceeds of a construction loan. The type of real property mortgage depends on the registration system in the area in which the property is located and the manner in which the property is held.

In Ontario property is generally held in freehold but in certain areas (i.e. urban areas) the interest in the property is frequently leasehold (i.e. apartments). When the interest in the property is leasehold the debt is secured by an assignment of the lessee's (mortgagor) interest as a tenant to secure payment of the amount borrowed. Thus the obligation of a mortgagor (chargor) and the rights and remedies of the mortgagee (chargee) under leasehold mortgage are similar to those under mortgages on freehold property.

The forms of mortgages in Ontario are of two types, depending upon the registration system under which the property is registered.

(i) Registry System - This is sometimes called the old system. Any instrument affecting land may be registered if properly executed and witnessed, but the Registrar assumes no responsibility as to a document's legal effect. It is therefore necessary for a person purchasing

land or wishing to determine the state of title for mortgage purposes, to search the Registry Office records to satisfy himself on the state of title. It is common to employ a solicitor to carry out the search and to determine and give his opinion to the prospective purchaser or mortgagee. Under the Registry Office system, a mortgage constitutes a conveyance of the legal title of the land to the mortgagee to secure the debt. The conveyance is subject to a right of redemption whereby the mortgagee is to convey the property back to the mortgagor upon payment of the debt and compliance with the other terms of the mortgage contract.

(ii) Land Titles System - This system is sometimes referred to as the new or Torrens system. The Registrar or the Master of Titles, as the case may be ensures that each instrument accepted for registration is in order. When a transfer of title is accepted the Registrar issues to the new owner a certificate of title which in effect is a guarantee of title. Should there be any encumbrance on the title, such would be noted as an exception to the Registrar's certificate. Similarly, when a mortgagee registers a mortgage the Registrar will issue a Certificate of Charge and should there be any encumbrances outstanding which would have priority over the mortgage charge, such would be noted in the Registrar's certificate. Under the land titles system there are certain restrictions as to the type of instrument which may be registered and those which type may only be recorded. When an instrument may only be recorded the Registrar assumes no responsibility for the validity or legal effect of the instrument. Under this new system the mortgagee charges the property as security for the debt and there is no conveyance of the legal title of the land to the mortgagee as under the registry system. The mortgagee is obliged, upon payment of the debt, to release the charge (cessation of charge).

(b) Mortgages and Charges as Transfers of Interests in Land

Mortgages and charges are conveyances of a legal estate or equitable interest in land with a provision that the estate

or interest will be returned upon the repayment of a loan or performance of some other obligation. They are the giving of property as security, with the borrower having the right to redeem the property from the lender when the former has paid off the loan. The right to redeem is, practically speaking, an equitable one.

Once an owner has mortgaged his interest, he is said to be left with the equity of redemption, which itself can be mortgaged or sold.

Should a mortgage or charge fall in default, the lender may take steps to realize on his security. He can, of course, sue the borrower for the debt as the latter is personally liable. However, it is more likely that the lender will bring foreclosure proceedings in which case the borrower's right to redeem the property is closed out. Instead of doing this, he may obtain a court order to sell the property or, if he has been given the power in the mortgage or charge, he may sell the property himself. Until he falls in default and is proceeded against, the borrower usually is entitled under the mortgage agreement to remain in possession and enjoy the premises.

Prior to 1873, there are basically two concepts of mortgage depending on whether we are speaking of the common law or the law of equity. Under common law, the title of the property is given over by the borrower to the lender, subject to the payment of the debt. However, on the payment of the debt, the title reverts back to the borrower and the mortgage is void. In equity law, the mortgage is considered to be only the security for the payment of the debt. The borrower is the equitable owner who is still entitled to possession and, of course, to receive the rent and profits from the land. If he does not pay off the debt, the lender has the right to foreclose, to sell, or take possession of the property. In 1873 The Judicature Act was passed providing for an amalgamation of courts of common law and equity.

(c) Mortgages and Charges as Contracts

The mortgage document is a contract containing a number of important terms, the most important being the personal covenant

of the mortgagor to pay off the debt and of the mortgagee to discharge his interest in the land upon repayment. It is useful to set out the more important covenants of each party. The mortgagor covenants:

- (a) to pay the debt and accrued interest, either at maturity date or in instalments as agreed by the parties,
- (b) to keep the property adequately insured in the name of the mortgagee;
- (c) to pay taxes on the land and buildings;
- (d) to keep the premises in a reasonable state of repair.

The mortgagee covenants:

- (a) to execute the necessary discharge of the mortgage upon repayment in full;
- (b) to leave the mortgagor in possession and not interfere with his use and enjoyment of the mortgaged premises so long as the mortgagor observes all his covenants.

We may note that the mortgagor signs the mortgage, and the mortgagee merely accepts without joining as a signer of the document. His promises are set out as provisos-- and his acceptance of the document binds him to the terms. It is apparent that the contractual obligations form a large part of the mortgage transaction.

The following are some of the items which are set out in every mortgage (although the charge is not included it is basically similar) -

1. The date of the mortgage.
2. The names of the mortgagor and mortgagee.
3. The amount of the loan.
4. A statement showing how the debt is to be paid off.
5. A statement showing that the mortgagor mortgages to the mortgagee the property in question as security for the loan.
6. A legal description of the real property.
7. Several different types of responsibilities of

the mortgagor in the form of covenants i.e. a covenant to pay taxes on the property. These are usually liable to an acceleration clause which is an agreement that if all the covenants are not kept, the debt will become due immediately and if not paid, the mortgagee may foreclose.

8. A warranty of title.
9. A statement that the mortgagor will pay all lawyer's fees if any foreclosure proceedings take place.
10. Estoppel certificate clause which states that the mortgagor must produce, upon request, a verification of the unpaid mortgage balance.
11. A clause stating that the mortgagor will keep the property in good repair.
12. A repayment clause--if the mortgagor wishes to pay off the debt in advance of the maturity date, most lenders require a payment of a penalty.

There may, of course, be many other clauses and covenants depending on what agreement the mortgagor and mortgagee had come to. The mortgagor often must agree to these clauses in order to get the loan he desires.

A mortgage is a transfer of an interest in land in the same way as is a grant, but the transfer is subject to the terms of the mortgage contract. Since basically a mortgage is a transfer, it must comply with the usual requirements for a transfer, adequately describing the parties and the land being transferred, and it must be in the proper form required for registration in the registry office of the jurisdiction.

Registration ensures that the mortgagee has an official interest in the property. There may be, in many cases, more than one mortgage on a property. Mortgages rank in priority according to their order of registration. Thus, we may speak of first and second mortgages. A first mortgage is one which has been registered ahead of any second mortgage and has rights against the property which are superior to those of a second mortgage. When the first mortgage is paid in full, the second mortgage will become the first mortgage. It can easily be seen at this point, because first mortgages do have superior rights in the property, second mortgages are usually for small sums and have higher interest rates.

If a mortgagee fails to register his mortgage, a subsequent purchaser from the mortgagor, unaware of the mortgage, will acquire title free from it upon registering his grant. Similarly a subsequent mortgagee, unaware of the first mortgage, will establish priority over it if he registers first. We are here concerned only with establishing the mortgagee's interest in the land; failure to register does not wipe out his other rights as a creditor of the mortgagor. Failure to register may result in the complete loss of the land as security where there is a transfer to an innocent purchaser, or to loss of priority against another secured creditor of the mortgagor who registers his claim first.

(d) Mortgage Default Remedies:

The most common default in the terms of a mortgage is in repayment of the debt. The rights of the mortgagee are clearly defined in the statutes of the various provinces. While the actual procedure and types of action available in the provinces differ, they can be classified either as extra-judicial remedies or judicial remedies.

(1) Extra-Judicial Remedies

(i) Entry Into Possession by Mortgagee and Sale Under Power of Sale--The exercise of the power of sale is regulated by provincial legislation and in some provinces may be exercised without recourse to a court of law. Under the power of sale clause in a mortgage, the mortgagee may enter into possession and either lease or sell the property. If the property is sold, the method and terms of sale must conform with the provincial legislation. If the sale price exceeds the mortgage debt, the surplus must be turned over to the borrower or to any subsequent encumbrancers who have prior claim over him. Where the proceeds of a bona fide sale are not sufficient to pay the amount owing on the mortgage, the mortgagee may sue for the amount owing on the covenant in order to obtain payment of the deficiency. If the mortgagee chose only to enter into possession, it constitutes physical takeover rather than a change in legal status

of the property. This is particularly beneficial in the case of rental projects where the mortgagee can then direct the tenants to pay rents directly to him. The mortgagee must take care in maintaining and administering the property and must account for revenue and expenditures. Taking possession of the property in this manner may only be a temporary measure as the mortgagee may later effect a sale.

(ii) Distress Under the Attornment Clause-The effect of this clause is to constitute a relationship of landlord and tenant giving a right to the mortgagee as landlord to distrain on the goods of the mortgagor subject to the limitation of distress imposed by provincial legislation.

(2) Judicial Remedies

(i) Action for Foreclosure-The mortgagee may take an action through the courts to obtain an order for foreclosure and possession whereby the mortgagor's interest in the property is extinguished if he fails to redeem within the time fixed by the court. In some provinces, the court may order a sale of the property rather than granting an order of foreclosure. In some provinces, when the mortgagee has commenced an action for foreclosure, the mortgagor may make payment into court of a certain sum of money and request the court to have an order for judicial sale issued instead of an order for foreclosure.

(ii) Action for Possession-The mortgage usually provides that the mortgagor is to have quiet possession of the property. In the event of default, the mortgagee is entitled to possession and may enter the land where he can do so peaceably, or otherwise he may bring an action through the courts for possession.

(iii) Action on the Covenant-Subject to provincial statutes, the mortgagee may sue the mortgagor personally for such monies as are in default or the whole of the mortgage monies by virtue of an acceleration clause. Where the property is sold under power of sale and the monies realized are not sufficient to retire the debt the mortgagee may sue for the deficiency.

(e) The Importance of Mortgages and Charges to the Assessor

There are at least three important consequences of mortgages and charges to the assessor:

(i) In the case of foreclosure by a mortgagee the assessor must alter the name of the person to whom the assessment notice for the concerned property is sent. This policy grows out of a court case *Lloyd v. Walker* (1902) where it was decided that a mortgagee in possession should be assessed as owner.

(ii) When a property is to be sold for arrears in taxes, the assessor is often requested to make a search of encumbrances (including mortgages or charges) on behalf of the Treasurer of the municipality involved, to fulfil the requirements of Section 583(1) of The Municipal Act.

(iii) The Assessor should always be aware of the mortgage money market. If mortgage money is easy to come by, and therefore, interest rates are low, the price of housing may also be low; however, if mortgage money is tight, the price of housing may be high. During a tight mortgage money period, interest rates will go up considerably, so that even if the selling price of houses remains constant, the final cost to the purchaser will be much higher.⁵

⁵ A very detailed study of the Housing and Mortgage Markets in Canada has been done by L. B. Smith as part of the Bank of Canada Staff Research Series (#6).

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DIVISION III - CONDOMINIUM

(1) Introduction

This division provides an opportunity to review many of the concepts which have thus far been discussed with respect to real property law.

The term 'condominium' originated in Roman Law and is translated from Latin as 'joint domain or co-ownership'. This definition has changed over the centuries and now condominium is used to describe a mixture of private and collective ownership. Land and building are divided into two distinct parts: the individually owned units within the whole and the collectively-owned remainder of the whole.

The most common application of the condominium concept is in housing developments where individuals own the separate units that go to make up a multiple housing scheme, whether it be row housing, multi-storied town housing or high rise apartments. Condominium can also apply to industrial malls, office buildings and even to subdivided land, where the roads and sidewalks and recreational areas are the common elements.

The Condominium Act of Ontario*

Condominium developments are possible under common law in most countries, including Canada. For example, it is possible to have a fee simple in a room within a building. This method, however, is awkward because of inconsistencies in legislation. Until the passing of The Condominium Act in 1967, it was not possible to register deeds with covenants imposing obligations upon subsequent purchasers (as would have to run with the land

* All references to The Condominium Act are from R.S.O. 1970, c. 77

in the conveyancing of units of the character found in association with condominium ownership). As well, descriptions of cubes of space (for example, in high rise buildings) are difficult to describe for registration purposes. In the recent past property taxes had to be levied against the property owned in common as one parcel, since without special provision each unit would have to be assessed in common as part owner of the entire parcel. Finally, taxes which might become overdue to a municipality had to be recovered from the corporation freehold and not specifically from the unit (and its share of the common areas) whose owner allowed his tax payments to be in default. Mechanics' liens⁶ against the property owned in common would have the same effect.

Thus to be effective a condominium act must provide the following:

- a) the division of the property into units and common elements
- b) the provision of an administrative framework to enable the owners to manage the property
- c) a method of transferring, leasing, or mortgaging each individual unit, with its interest in the common elements
- d) an effective way of enforcing, if desired, restrictions on the transfer and leasing of units
- e) the right of each owner to have his interest in the common elements separately taxed
- f) an effective way of enforcing payment by each owner of his share of the common expenses
- g) an effective means of handling problems of destruction, termination of the condominium status, expropriation, sale, and obsolescence

⁶Any person, who by reason of supplying services or materials to the owner of land for the improvement of his property, creates a mechanics' lien against the land. The circumstances and conditions upon which a lien of this sort may arise are set out in The Mechanics Lien Act.

- h) provision for insurance, taking into account the interdependence of the owners of the various units and the possibility of conflicts of interest in the event of fire
- i) an effective means of adding to the common elements and acquiring other assets for the use of the owners

The Condominium Act of Ontario, 1967, was drawn up with the above objectives in mind. Generally, The Condominium Act outlines the method by which a condominium development can be commenced; sets out the requirements for registration; indicates the form the condominium will take and gives details of government and administration procedures.

The rest of this discussion of the condominium is based on (1) relevant parts of the Act as they relate to concepts which have previously been dealt with in Divisions I and II, and, as might be expected on (2) the taxation of condominiums.

(2) Condominium Defined

Condominium has been defined as a system of separate ownership of individual units in multi-unit projects.

An example of such property is a high-rise containing residential units each of which is individually owned; the remainder of the property, or the common elements, include the roof, the basement, elevators, entrance way and corridors, stairways, garages, the parking areas, playgrounds, swimming pool, bowling alleys, recreation room, the gardens and probably the janitor's quarters.

Another example is an industrial development including a cluster of small factories; each is individually owned and the remainder of the property, including the service facilities, is owned in common by the owners.

The condominium concept has many possible applications including duplexes, industrial developments, row housing, cottage colonies, and perhaps, a standard subdivision where the home owners might mutually own common property such as parks and roads.

(3) Co-operatives and Condominiums Distinguished

Before continuing, however, it is necessary to define co-operative housing - a term that is often confused with condominium housing.

In co-operative housing a developer forms a corporation which holds title to the land and building and each tenant owns stock in the corporation and has a lease to an apartment in the building. Each tenant has to pay his share of the mortgage debt, taxes, upkeep and corporate expenses. These expenses are budgeted annually and divided among the owners in proportion to the number of shares of stock allocated to each apartment.

There are several major problems with co-operative housing:

- a) if one tenant-shareholder fails to pay his share then it must be carried by the others if foreclosure of the lien on the whole property is to be avoided.
- b) the individual tenant is obliged to obtain permission from the other tenants of the co-operative before he can assign his interest to another party.
- c) conventional mortgage financing is difficult in that the lenders do not consider the shares in the co-operative or the lease itself as valid security.

In contrast to a co-operative owned apartment, the condominium has an advantage in that the interest rates imposed from the beginning of the loan prevail until re-financing is voted upon and approved by a majority of 66 2/3 per cent of all unit owners. The co-operative can be refinanced readily at any time and the prevailing loan rates can be adjusted to a value ratio coinciding with current economic levels.

The condominium is a lower taxation risk to the municipality than a co-operative apartment since each unit is separately taxed and individually financed. No unit owner is liable on the default of another.

(4) The Condominium and Real Property Law

The property associated with condominium ownership is held according to two forms of corporeal hereditament, fee simple and tenancy in common. In turn, different easements, a type of incorporeal hereditament, are associated with each of the two previous ways of holding property.

It should be emphasized that the two interests, that of owning a unit and that of owning a share of the common elements cannot be separated while the condominium exists. Thus, under Section 1 (1) (1) of The Condominium Act, an owner is defined as:

"owner" means the owner or owners of the freehold estate or estates in a unit and common interest, but does not include a mortgagee unless in possession.

(a) Corporeal Hereditaments

The actual term given to condominium property held in fee simple is the unit, while the word common elements is used to describe property held under tenancy in common.

(i) Units and Their Legal Description

The word 'unit' is used in Ontario to denote the three-dimensional aspect of an owner's interest in his cube of space and to indicate a concept which is different from traditional terms used in property ownership or occupancy.

Section 1 (1) (r) of The Condominium Act defines a unit thus:

"unit" means a part or parts of the land included in the description and designated as a unit by the description, and comprises the space enclosed by its boundaries and all the material parts of the land within this space at the time the declaration and description are registered.

The problem which the Act is intended to provide for and surmount, is the accurate description of a cube of space somewhere in the air. The survey of the land is essential. The buildings must be included to provide a framework for the description of the units and a means of ensuring that the boundaries of the units are within the boundaries of the land. Each registration must have a complete file with a survey map of the land showing the building location in relation to the boundaries of the lot, complete structural plans of the building as well as diagrams showing the boundaries and shapes of each unit, and its location in relation to other units. The boundaries of each unit must be described by metes and bounds and a survey must certify that the units so described are the same as those actually existing in the building. The Act makes no definite provision for the boundaries of the units. For instance, the boundaries by description might be the interior wall surfaces of a unit, in which case the thickness of the wall between surfaces will become part of the common property of the corporation. Having all the required documents included with the registration, the units can then simply be described in deeds and mortgages by a designated unit number and plan number or by a registered diagram or description of the unit. This description would appear to be adequate for municipal records.

(ii) Common Elements

The part of the property owned in common by the owners of the units, in addition to being known as the common elements, is known as common property. The Condominium Act in Section 1 (1) (e, f, and g) defines common elements and a number of associated terms as follows:

- (e) "common elements" means all the property except the units;
- (f) "common expenses" means the expenses of the performance of the objects and duties of a corporation and any expenses specified as common expenses in a declaration;
- (g) "common interest" means the interest in the common elements appurtenant to a unit;

Generally there are eight elements which are usually included under common elements:

- (a) The land on which the building is located;
- (b) The foundations, columns, girders, beams, supports, main walls, roof, halls, corridors, lobbies, stairs, stairways, fire escapes and entrances and exits of the building;
- (c) The basement, yard, gardens, parking areas and storage spaces;
- (d) The premises for the lodging of janitors or persons in charge of the property;
- (e) Installations of central services, such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, and incinerating;
- (f) The elevators, tanks, pumps, motors, fans, compressors, ducts and, in general, all apparatus and installations existing for common use;
- (g) Such community and commercial facilities as may be provided for in the documents creating the condominium;
- (h) All other parts of the property necessary or convenient to its existence, maintenance and safety, or normal in common use.

Sections 7, 11, and 14, of The Condominium Act respectively deal with specification, use, and modification of common elements.

(b) Incorporeal Hereditaments

(i) Section 8(1) of The Condominium Act specifies the easements which are attached or appurtenant to condominium units:

1. Where a building or any part of a building,

- (a) moves after registration of the declaration and description; or
- (b) after having been damaged and repaired, is not restored to the position occupied at the time of registration of the declaration and description,

an easement for exclusive use and occupation in accordance with this Act, the declaration and the by-laws, over the space of the other units and common elements that would be space included in the unit if the boundaries of the unit were determined by the position of the buildings from time to time after registration of the description and not at the time of registration.

2. An easement for the provision of any service through any installation in the common elements or any other unit.
3. An easement for support by the common elements and any other unit capable of providing support.

(ii) Section 8 (2) of the Act details

the easements related to the common elements:

1. An easement for the provision of any service through any installation in any unit.
2. An easement for support by any unit capable of providing support.

(5) Registration

With respect to registration The Condominium Act of Ontario sets out the following provisions in Section 5 (1-4):

- (a) (i) sets out direction to every master of titles and every registrar of deeds in whose office a declaration and description is registered that he keep an index in the prescribed form which is known as Condominium Corporations Index.
- (ii) the master or registrar, whichever is the case, shall also keep a register in the prescribed form which is known as the "Condominium Register."

All declarations, descriptions, by-laws, notices of termination and other instruments respecting land governed by this Act shall be registered and recorded in the "Register" in accordance with the Act and the regulations.

- (b) Full protection for the exclusive rights of ownership and use of the owner of a described unit and an undivided interest in the common elements.

(6) The Declaration and the Description

The Condominium Act is invoked when the developer registers in a Land Titles or Registry Office a 'declaration' and -'description' of freehold land. The act of registration of the declaration and description automatically prohibits three possible occurrences:

- separating the ownership of a unit and common interest
- partitioning or dividing the common elements, and
- enforcing an encumbrance against the common elements.

(a) The Declaration

The declaration states the major terms that govern the owners.

(i) According to Section 3 (1) the declaration must contain:

- (a) a statement of intention that the land and interests appurtenant to the land described in the description be governed by this Act;
- (b) the consent of all persons having registered encumbrances against the land or interests appurtenant to the land described in the description;
- (c) a statement, expressed in percentages, of the proportions of the common interests;
- (d) a statement, expressed in percentages allocated to the units, of the proportions in which the owners are to contribute to the common expenses; and
- (e) an address for service.

(ii) The declaration may according to Section 3 (2) contain provisions concerning:

- (a) a specification of common expenses;
- (b) a specification of any parts of the common elements that are to be used by the owners of one or more designated units and not by all the owners;
- (c) provisions respecting the occupation and use of the units and common elements;
- (d) provisions restricting gifts, leases and sales of the units and common interests;
- (e) a specification of the number, qualification, nomination, election, term of office, compensation and removal of members of the board, and the meetings, quorum, functions and officers of the board;

- (f) a specification of duties of the corporation consistent with its objects;
- (g) a specification of the majority required to make by-laws of the corporation;
- (h) provisions regulating the assessment and collection of contributions towards the common expenses;
- (i) a specification of the majority required to make substantial changes in the common elements and the assets of the corporation;
- (j) a specification of any provision requiring the corporation to purchase the units and common interests of any dissenters after a substantial addition, alteration or improvement to or renovation of the common elements has been made or after the assets of the corporation have been substantially changed;
- (k) a specification of any allocation of the obligations to repair and to maintain the units and common elements;
- (l) a specification of the percentage of substantial damage to the buildings and a specification of the majority required to authorize repairs under section 17;
- (m) a specification of the majority required for a sale of the property or of part of the common elements;
- (n) a specification of the majority required for the termination of the government of the property by this Act;
- (o) any other matters concerning the property.

(b) Description

The description must contain the structural plans of the buildings; diagrams showing the shape and dimensions of each unit and the approximate location of each unit in relation to the other units; and a certificate of a surveyor that the buildings have been constructed. For details see Section 4 (1) of The Condominium Act below:

- (a) a plan of survey showing the perimeter of the horizontal surface of the land and the perimeter of the buildings;
- (b) structural plans of the buildings;
- (c) a specification of the boundaries of each unit by reference to the buildings;
- (d) diagrams showing the shape and dimensions of each unit and the approximate location of each unit in relation to the other units and the buildings;

- (e) a certificate of a surveyor that the buildings have been constructed and that the diagrams of the units are substantially accurate and substantially in accordance with the structural plans; and
- (f) a description of any interests appurtenant to the land that are included in the property.

(7) The Corporation

The management of the property and common interests is undertaken by the corporation, which is automatically created upon the registration of the declaration and description. The corporation is without share capital and its members are the owners of the units. The Corporations Act and The Corporations Information Act do not apply to the condominium corporation. The affairs of the corporation are managed by a board of directors, usually consisting of three persons for a period of three years. The object of the corporation is to control, manage, and administer the common property for the benefit of all the owners. This includes the duty to ensure compliance by the owners with this Act, the declaration and the by-laws.

The corporation has the right to own acquire and dispose of real and personal property for the use and enjoyment of the property with the members of the corporation sharing the assets of the corporation in the same proportions as the proportions of their common interests.

The corporation has certain obligations to perform but the duties are mostly administrative and deal with matters that concern the building as a whole. The corporation handles the financing required to maintain and repair the common property as well as to ensure that the building is adequately insured against fire and any other risks which the owners deem necessary. The Act requires the corporation to contract for insurance rather than allow owners to insure individually. However, in the event of destruction by fire, the interests of the owners and of the mortgagees, the Act contemplates a separate policy covering the mortgagees' interests which each individual is permitted to obtain. Another

basic duty of the corporation is to ensure that each owner complies with the by-laws, The Act, therefore, gives it the power to enforce its by-laws in order to adequately protect the owners.

The Act has some ingenious means by which the corporation can cure defaults against owners who do not pay their share of the common expenses. A lien can be registered against the title of the defaulter's unit and can be enforced in the same manner as a mortgage. The corporation then can foreclose or sell the unit and pay off the lien.

In cases where the corporation elects to add to or substantially alter the common property and considerable expense is involved, any owner who voted against the expense may have his unit and common interest purchased by the corporation at the going market value. That value can be determined by an arbitration if the parties cannot agree.

For a complete list of the rules governing the condominium corporation see Section 9 (1-19) of The Condominium Act.

A condominium may be terminated by a vote of the owners who own 80% or such greater percentage as is specified in the declaration of the common elements, and by consent of the persons, including mortgagees, who have claims against the property. In the case of termination, the unit owners are considered to be tenants in common of the land and interests attached to the land described in the particular description which created their condominium, in the same proportions as their common interests (see Sections 18-21 on termination).

(8) By-Laws

Section 10 outlines the method of altering and registering the by-laws governing condominiums.

The by-laws of the corporation specify the details of government and administration. The by-laws are made by a vote of the members who own at least 66 2/3% of the property. There are nine general areas within which the corporation may make by-laws. These include: the governing and management of the property; the maintenance of the units and common elements; the duties of the corporation and its board; and the making of

common element rules for the preventing of unreasonable interference with the use and enjoyment of the property.

(9) Taxation

With respect to taxation, Section 7 (11) of The Condominium Act states that:

for the purpose of municipal assessment and taxation, each unit and common interest constitute a parcel, and the common elements do not constitute a parcel.

This section provides a modification from established patterns of municipal taxation. The corporation is not liable for the payment of any tax and the common property is not subject to any lien, sale or other process in respect of unpaid taxes. The responsibility for taxes is solely that of the owners of the units and common interests.

Instead of a claim against the common elements, the Act gives a claim against all the units and all the common interests declared therewith.

There are a number of factors which an assessor must take into account when valuing condominium units:

- (a) Location has the greatest potential affect on value.
 - (b) In order to meet with competition in the same class a condominium must have built-in amenities to attract purchasers. Some of those suggested are swimming pool, recreation room, playground and bowling alleys. The class of construction and consequently the costs of these types of amenities will depend largely on the kind of owner who will be attracted to purchase these units. The prospective purchaser is much more cautious in making a final decision than if he were to be a tenant, consequently he is inclined to be demanding the most he can receive for the money required to purchase.
 - (c) The size and composition of the units are such that will fit the needs of the ultimate consumers.
 - (d) Appropriate staggering of the original pricing of the units is necessary. In a high rise property the higher floor levels must be valued greater than similar space on the lower floors. Also there should be allowances made for differences in exposure and view.
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In a low-rise condominium the unit prices will vary with location in the complex, view, exposure or proximity to street noises and common area activities such as playground areas or parking areas, etc.

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Division IV - Registration

(1) The Registry Act*

(a) General

The initial purpose of the registration of transactions relating to the ownership of land was to prevent secret conveyances and fraudulent dealings which might arise therefrom.

The first Registry Act was introduced in the Province of Upper Canada (Ontario) in 1795. This Act provided for the registration of memorials of instruments affecting land and directed that an alphabetic index of all townships be kept. The registrar was to enter the registered number of every memorial and the parties thereto in the order in which they were presented for registration. A memorial is an abstract of the subject matter of a deed or other instrument including the original retained by the owner.

In 1865 a new Registry Act was passed which provided for the registration of the original instrument and a system of indexing registered instruments according to lot and concession or lot and registered plan. This system is still in effect at this date, however its employment will be lessened as time goes on as it will gradually be supplanted by The Land Titles Act.

The Registry Act is administered by the Ministry of Consumer and Commercial Relations.

There is a registry office provided for each county and district in the Province where The Registry Act applies. In some counties there are more than

* All quotations of The Registry Act are from R.S.O. 1970 as amended to June, 1975.

one office, and some cities, such as Toronto and London, have registry offices of their own. The proper method of referring to a particular registry office is to say "the registry office for the registry division of the county of _____" or where there is more than one registry office in the county "the registry office for the registry division of the East Riding of the county of _____".

(b) Duties of the Registrar

Each registry office is under the control of a registrar who is appointed by the Lieutenant-Governor in Council. The registrar may appoint a deputy or deputies who may perform all the duties required by the Act with the same effect as if performed by the registrar. The duties of the registrar include

- (i) the conduct and supervision of the office (S.13)
- (ii) his attendance or the attendance of a deputy during office hours.
- (iii) furnishing abstracts of instruments affecting lands in his division, (S.15)
- (iv) the exhibition of any original instrument, plan or books of office for personal inspection by the general public. (S.16)
- (v) the registration of instruments affecting land within his division (S.18) and
- (vi) the entry of the details of registration of the instruments in the books of office provided under the Act (S.18)

(c) Books of Office

The Books of office to be found in the registry office are as follows:

(i) Abstract Index

This is a book in which the registrar is required to enter under a separate and distinct heading each lot or part of a lot as it is patented by the Crown or as defined on any registered plan of subdivision. He is also required to enter in the index every instrument which mentions each lot, the names of every party to the instrument, its nature, the registration number and the day, month or year of its registration, the consideration and a summarized description of the land which is sufficient to identify its location (see The Registry Act, Section 20.)

(ii) The General Register Index

This is a book kept for the purpose of recording wills, probates, letters of administration and various other instruments of a general rather than a particular nature (see The Registry Act, Section 18 (6) (7)).

(iii) The Plans Index

A book in which all subdivision plans are indexed. (See The Registry Act, Section 80.)

(d) Principle of The Registry Act

The essential purpose of The Registry Act is to provide for the registration of any form of document or instrument which in any way affects the title of land. In the interpretation section of The Registry Act (Section 1(c)) the word 'instrument' is defined as follows:

'Instrument' includes every instrument whereby land in Ontario may be transferred, disposed of, charged, encumbered or affected in any other way, and, without limiting the generality of the foregoing, includes any instrument mentioned in subsection 6 of section 18 and a Crown grant of Canada and of Ontario, a deed, conveyance, mortgage, notice of sale by a mortgage, assignment of mortgage, certificate of discharge of mortgage, assurance, lease, bond, release, discharge, agreement for the sale or purchase of land, caution under The Devolution of Estates Act or renewal or withdrawal thereof, municipal by-law, certificate of proceedings in any court, judgment or order of foreclosure and every other certificate of judgment or order of any court affecting any interest in or title to land, and a certificate of payment of taxes granted under the corporate seal of any municipality by the treasurer, a sheriff's and treasurer's deed of land sold by virtue of his office, a contract in writing, every order and proceeding in bankruptcy and insolvency, a plan of a survey or subdivision of land, and every notice, caution and other instrument registered in compliance with an Act of Canada or Ontario;

Section 18 (6) of The Registry Act requires that:

The following instruments when received for registration shall be registered as general registrations - and, except as otherwise provided in this Act, shall not be recorded in the abstract index:

1. Wills.
2. Letters probate.
3. Letters of administration.
4. General appointments of new trustees.
5. Certificates or certified or notarial copies of judgments or of court orders appointing or removing executors, administrators, guardians or trustees.
6. Certificates or certified or notarial copies of orders made under The Mental Incompetency Act.
7. Certificates under Section 20 of The Change of Name Act. R.S.O. 1970
8. Powers of attorney or revocations thereof.
9. General bars of dower.
10. Orders in council of Canada or Ontario, or certified copies thereof, not containing local descriptions.
11. Notarial copies of letters patent or certificates of incorporation or of supplementary letters patent or certificates
12. Notarial copies of letters patent or certificates of changing names of corporations or amalgamating corporations. \ .
13. Notarial copies of certificates of amalgamation of loan or trust corporations.
14. Notarial copies of licences in mortmain.
15. Notarial copies of extra-provincial licences under Part IX of The Corporations Act.
16. Plan documents under subsection 9 of section 78.

(e) What Instruments May be Registered

The instruments which may be registered under The Registry Act are not only those specifically mentioned in the Act but any other instrument whereby land may be transferred, disposed of, charged, encumbered or which affects land in any way. Therefore any document which directly or indirectly affects interests arising out of or connected with real property, may be registered provided that the interests in property are either charged or interfered with in some way.

Instruments must be registered in the registry office for the particular registry division in which the lands are situated.

(f) General Requirements for Registration

- (i) The lands must have been patented by the Crown. When lands are patented by the Crown in that part of Ontario which is organized and divided into counties, the letters patent are given directly to the patentee. The original patent is rarely, if ever, registered. In that part of Ontario which is divided into territorial districts, the letters patent are mailed to the Local Master of Titles and the lands are entered under The Land Titles Act. This does not apply, however, to the lands which are patented by the Crown in right of Canada, the most common of which are sales of Indian lands to private individuals which are usually mailed to the patentee who may register his patent under either The Land Titles Act or The Registry Act. The only instruments which may be registered against unpatented

lands are mortgages, encumbrances or liens, made or given by a locatee.

- (ii) Necessity for description. The lands must be properly described in the instrument by a local description which a surveyor can trace or ascertain on the ground. The foregoing rule does not apply to certain types of instruments such as wills, grants of administration or certain other general types of instruments which are registered in the general register. The main purpose of the foregoing requirement for a local description is to enable the registrar to abstract the instruments so that each portion of a lot may be identified on the abstract index. The registrar may refuse to accept an instrument for registration on the grounds that the description is not sufficient to permit him to abstract it.
- (iii) Every instrument affecting land executed after a subdivision plan has been registered must conform and refer to the plan.
- (iv) No instrument referring to an unregistered plan shall be registered unless some previous instrument referring to the plan has already been registered with respect to the same land.

(g) The Effect of Registration

After the Crown grant every instrument affecting land or any part thereof will be considered fraudulent and void against any subsequent purchaser or mortgagor for valuable consideration without actual notice, unless the instrument under which the subsequent purchaser or mortgagee claims.

(h) Plans

Plans may be considered under four headings.

(i) Subdivision Plans.

78(1) A plan of subdivision shall not be registered unless it has been prepared by a surveyor and unless it complies with regulations.

(10) A registered plan of subdivision is not binding on the person who registered it or upon any other person unless a deed or mortgage in which the land is described in accordance with the plan has been registered.

(11) A plan of subdivision of land that is within an area to which The Land Titles Act applies shall not be registered under this Act, subject to subsection 2 of Section 160(a) of The Land Titles Act.

Subsection 11 of Section 78 marks an important change in previous policy. Prior to this 1972 amendment property holders had the option of registering their property under The Registry Act or The Land Titles Act in the municipalities where the dual system was in effect. Now they must register them under The Land Titles Act.

(ii) Municipal Plans

(a) Compiled Plans. The Council of a municipality upon the written request of the Director of Land Registration or other interested persons decides by resolution to have a composite plan made and registered and names an Ontario Land Surveyor to undertake the work. (See Section 89 (1-4)).

The surveyor makes a personal search of the books, plans, and instruments registered in the registry office affecting the territory to be included in the plan. From this he compiles a plan on which he plots the parcels as they appear from the descriptions in the instruments and from the subdivision plans registered in the office. When completed the plan shall have entered on it the certificates of the Municipal Clerk, the head of the municipality and the surveyor with the corporate seal of the municipality.

(b) Plans by Judges' order. These plans deal with lands which have been conveyed in small parcels by metes and bounds without reference to a plan or where lots shown on registered plans have had parcels severed therefrom and conveyed without being distinguished by numbers or letters. After the necessary formalities have been adhered to and the survey and plan of the area affected has been made, the Judge directs what owners or other interested persons are to receive notice, etc. and in his order directs the registrar to have the lands laid out into lots or parcels in such manner and numbered as the Judge sees fit. (See Section 90).

(iii) Unregistered Plans

Many registry offices contain unregistered plans of cities, towns or villages that have been prepared by municipalities for the convenience of their officers, assessors, collectors, solicitors, etc., copies of which have found their way into the registry office and serve as an index or guide in the location of individual properties. Since these plans are not registered abstracts no index was opened for them. At one time descriptions in instruments sometimes referred to these unregistered plans. Today this is not permitted unless a previous instrument referring to the plan has already been registered. (S.88)

(iv) Miscellaneous Plans

Plans under this heading are those which are filed under the authority of either Provincial or Federal Legislation for the purpose of expropriating lands from private owners or such other purposes as may be required by the Act under which they are filed.

The method of registration of plans of this nature varies from office to office. The usual practice is for the registrar, following registration, to abstract the number of the plan, its date and the lands affected in the abstract index after the same manner as he abstracts any other instrument affecting land. In other offices some of these plans, particularly types such as preliminary assumption plans which tend to affect more than one lot and are not particularly concerned with the acquisition of title, are deposited under Part II of The Registry Act and entered in the deposit index.

(i) Conclusions

The registry office may be likened to a storehouse in which is stored, for safe-keeping, all the instruments and documents dealing with land transactions and in which the registrar acts as a custodian and is responsible for making the instruments available upon request. It must be made very clear that the registry office does not vouch for the title to land but only a record of instruments affecting title. Under The Registry Act the only way in which a person's title to land may be examined or searched is to examine the instruments affecting the lands which are registered in the registry office.

(2) The Land Titles Act*

(a) General

The principle of the registration of title to land, as distinguished from the registration of transactions respecting the title to land, was introduced into the Province of Ontario in 1885 and at that time applied only to the City of Toronto and the County of York. For a list of areas to which The Land Titles Act applies see Appendix 1 at the end of this section.

* All references to The Land Titles Act are from R.S.O. 1970 as amended to June, 1975.

The Land Titles Act is administered by the Ministry of Consumer and Commercial Relations and comes under the jurisdiction of the Director of Titles.

Each office outside of the County of York is under a Local Master of Titles. The office in the City of Toronto is under the Master of Titles.

(b) Duties of the Master of Titles

The duties of the Local Master of Titles with respect to the conduct of the business of his office are, generally speaking, the same as those which apply to a Registrar of Deeds except that where the Registrar of Deeds has no responsibility for a condition of any person's title to land registered in his office, the proper Master of Titles has the responsibility of certifying as to the name of the person owning land and also qualifications, encumbrances or conditions which affect his title to the land.

(c) Books of Office

(i) First Registration Book

When land is first registered under The Land Titles Act, either by the registration of letters patent or brought under the Act by the application of an owner, the proper master enters the facts in his book of first registrations for the particular township and gives the land a parcel number (see Part IV, Sections 33-60 of The Land Titles Act).

(ii) The Register

The subsequent registrations are found in the Register. This is the most important book to be found in the land titles office since it contains the authentic record of title to land, the owners' names, and any charges, encumbrances or conditions to which the title is subject and also a description of the lands affected. (Part VII, Sections 74-158 of The Land Titles Act is involved here).

Each entry is made on a separate page or succession of pages under the parcel number assigned by the proper Master of Titles at the time of first registration. The word "parcel" as used in The Land Titles Act therefore does not necessarily mean a piece of land in the ordinary sense of the word but is rather an entry of ownership.

Since in most land titles offices the area covered is too large to be handled effectively by one set of register books, it is customary to subdivide the geographic areas under the jurisdiction of the particular office into subdivisions, as for example, the land titles office at North Bay has two sets of registers, one of which is called the Register for Nipissing and a second, which applies to land in and around the City of North Bay, is called the Register for Widdifield and Ferris.

The name of the parcel register must be used in conjunction with the parcel number in order to definitely identify the particular parcel. The parcels are entered numerically in the registers for each subdivision without reference to township, concession, lots, etc. Therefore parcels which follow one another in numerical sequence may be in various parts of the land titles district and many miles apart. After the original entry is made in the parcel register, new parcel numbers are assigned to those parts which are sold by the registered owner. A parcel does not necessarily mean one block of land since the record of ownership may include under one parcel number several blocks of land which are widely separated from one another.

The same area of land may have more than one parcel number where the mining rights and the surface rights are owned by different persons.

Where land is transferred the Local Master makes a note on the margin of the page stating that all or part as the case may be, of the parcel has been transferred. Where all the parcel is transferred the Local Master will rule out the name of the original registered owner and will then enter on the register the name and address of the person to whom the land is transferred. The parcel number under these circumstances remains unchanged.

Where only part of the parcel is transferred the Local Master will make an entry in the register stating that under transfer number _____ the part of the parcel described as follows, giving a metes and bounds description of the land, concluding with the words "now entered as parcel _____". The Local Master then makes a new entry in the register for the parcel created by the transfer registered against the original. On the new entry will be noted the words "originally parcel _____", being the number of the original parcel. If the owner of the newly created parcel in turn transfers part of this parcel, the Local Master again follows the same procedure as before and creates a new parcel for the part transferred but this time in the margin is noted the words "originally parcel _____, recently

parcel _____", thereby enabling a searcher to trace the parcel back through a succession of previous dealings to the original entry in the register.

The parcel register, as it is usually called, is the substitute for title deeds which are registered under The Registry Act and is conclusive proof as to the ownership of land.

The transfer of land from one owner to another is affected by a simple instrument which is known as a transfer. A transfer is not a deed since it is not made under seal and it simply provides the authority for the proper Master of Titles to make changes of ownership in the register.

When a transfer is presented to the proper Master of Titles for registration it is entered in a book called the fee book and given an instrument number. This process does not constitute registration. Registration is not complete until the transfer is entered on the parcel register.

The parcel register contains all entries which affect title to land such as charges, encumbrances, conditions, notices, inhibitions, and any reservations made in the original letters patent.

All lands registered under The Land Titles Act are subject to certain exception and qualifications as expressed in Section 51 of The Land Titles Act. The exceptions and qualifications mentioned in this section are those which are in the nature of a public burden and include taxes, the right of expropriation, public highways, the control of land adjacent to the King's Highway, and municipal By-Laws regulating the use of land.

(iii) Highways Register

This is a special register set up and maintained in each land titles office on a geographic basis in which is entered all types of plans submitted by the Ministry of Transportation and Communication to a Master of Titles for registration.

When a plan of any type is submitted to the proper Master for registration it is first of all entered in the Highways register. If the application attached to the plan requests the master to enter the plan in the parcel register the application must name the particular parcels which are affected by the plan otherwise registration of the plan does not proceed any further than entry in the Highways register.

Plan types A, B, C, and D, since they obviously affect the title to registered land, must therefore show the proper parcel numbers in order to be entered on the parcel register. None of the remaining types of plans are entered in the parcel register unless there is some special reason for referring to a particular parcel or parcels.

Essentially, the Highways register is an index of the Highways plans irrespective of type, which may be registered in a land titles office.

(iv) The Trans-Canada Pipe Line Register

A register in which is entered all route plans defining the location of easements registered by the Northern Ontario Pipe Line Crown Corporation or the Trans-Canada Pipe Lines Limited.

There are other books in use in the land titles office which include The Execution Book for the registration of writs, etc., The Company Book in which is entered the date concerning the incorporation of companies, including the names of persons authorized to execute instruments, The Fee Book in which is entered the number of instruments, as soon as they are received in the land titles office and also the fees charged for their registration and a Suspense Book in which are written instruments submitted for registration, given a number by the master, but which have not been registered or entered on the parcel register by reason of some imperfection therein and therefore held in suspense. (see Ont. Reg. 403, Sec. 66 (4-6) C-R.R.O. 1960.

(d) Entry of the Land on the Register

Any person

(i) entitled for his own benefit to an estate in fee simple, or

(ii) capable of disposing of land for his own benefit

may apply to the proper Master of Titles to have himself or a nominee registered as owner of land.

Any person who has contracted for the purchase of a fee simple estate in land may also apply if the vendor consents to the application. The Attorney-General for Canada or the Attorney-General for Ontario may apply in respect to the title of the Crown to any land.

Joint Tenants, Tenants in Common, or joint owners in any other form may apply jointly for registration.

Lands are entered on the register

- (i) by an application of the owner to the proper Master of Titles for the first registration of lands previously registered under The Registry Act.
- (ii) by the registration of the letters patent in the Territorial Districts. All letters patent for Crown Lands under the control of the Province of Ontario are mailed directly to the Local Master of Titles and not to the patentee. Upon receipt of the letters patent, the proper Master of Titles enters the patentee as the owner and the patentee is then given a certificate of title to the lands.

Titles to land are registered as being either

- (i) absolute,
- (ii) qualified, or
- (iii) possessory.

Absolute Title is a title conferring upon the proprietor an absolute right to the property against all the world.

A Qualified Title exists where on an examination of the title it appears to the proper Master of Titles that it could be established only for a limited period or subject to certain limitations. The Master may, by an entry made on the register, except from the effect of registration any estate, right or interest which appears to affect the title to the land. The owner of land registered with a qualified title has what amounts to an absolute title to the land subject to a particular qualification or qualifications stated in the register. Registration with a qualified title does not affect or prejudice the enforcement of any estate, right or interest which appears by the register to be excepted. Qualified titles are not common.

Possessory Title, as the word is used in The Land Titles Act, is not to be confused with a title acquired by adverse possession under The Statute of Limitations. Possessory titles were originally designed as an administrative expedient for getting the land on the register in the first instance. They differ from absolute titles in that the titles prior to first registration are not officially examined nor are they assured. Persons dealing with them would have

to examine the title down to the date of first registration and beyond if necessary, as though they were dealing with lands registered under The Registry Act. After ten years from the date of registration the owner, with a possessory title, may apply to the proper Master of Titles to have his name entered as the owner with an absolute title at which time the proper Master will investigate the title and enter the owner with an absolute or qualified title as the case may be.

Certificate of Ownership

After the name of the first registered owner has been entered on the register, the proper Master of Titles is obliged to furnish, upon request of the registered owner, a certificate which will state whether the title of the owner mentioned therein is absolute, qualified or possessory (see Section III of The Land Titles Act).

(e) Cautions

A caution is literally a warning to any prospective purchaser of registered lands that some person or persons has an interest in the parcel. A caution may be lodged by any person claiming such an interest upon application to the proper Master of Titles by the claimant. Entry of the caution upon the register entitles the cautioner to a notice in the event that the registered owner attempts to make any dealings with the land but it does not in any way affect the title. A caution may be lodged by the proper Master of Titles under Sections 143-152 of The Land Titles Act where the Master has evidence or good reason to believe that the description of lands in the parcel is in error. The Master may then insist that no further dealings be had with the land until such time as the description of the land is corrected.

(f) Charges

Registered land may be charged with the payment of a sum of money by the registered owner. For all practical purposes a charge is the same as a mortgage and failure of the owner to pay according to the terms and conditions set out in the charge may result in foreclosure, as under The Registry Act. The main difference between a mortgage and a charge is that the legal title to the land remains in the registered owner (see Sections 98-108 of The Land Titles Act). (Also see Division 11 on Mortgages and Charges).

(g) Rectification of the Register

The proper Master, upon the application of the registered owner, may substitute a revised and corrected description of lands in substitution for an erroneous description appearing on the register (see Part X, Sections 177-181 of The Land Titles Act).

(h) Plans

(i) Subdivision Plans

Where registered land is subdivided for the purpose of being sold according to lots laid out on the plan of subdivision the plan may be registered in the land titles office. Following the registration of the plan all subsequent transfers of land must be made according to the plan. All subdivision plans registered under The Land Titles Act have a distinguishing letter "M" before the number of the plan. This is done in order to distinguish them from subdivision plans filed under The Registry Act.

(ii) Reference Plans

These are plans which are filed in the land titles office for reference purposes only. After a plan of this nature has been filed in the office, lands covered by the plan may be sold with reference thereto.

(iii) Highways Plans

The procedure to be followed by the master and the effect of registration of all Highways plans is set out in the Procedural Guide for Land Titles Offices issued under the authority of the Director of Titles. The procedure to be adopted by each Master of Titles is set out in the guide in detail according to plan types.

Appendix 1

Source: THE LAND TITLES ACT, R.S.O. 1970, c 234

S 3

1. COUNTIES

<u>County or Regional Municipality</u>	<u>Part</u>	<u>Location of Office</u>
BRUCE	all	Walkerton
DURHAM	Registry Division of West Riding	Bowmanville
ELGIN	all	St. Thomas
ESSEX	all	Windsor
HALTON	all	Milton
HASTINGS	Whole County except Belleville and Trenton	Belleville
MIDDLESEX	Registry Division of Middlesex west and City of London	Glencoe
NIAGARA	Former County of Lincoln	St. Catharines
	Former County of Welland	Welland
ONTARIO	all	Whitby
OTTAWA-CARLETON	Whole of Regional Municipality except Cumberland township formerly in Russell County	Ottawa (City Regional Office)
OXFORD	all	Woodstock
PEEL	all	Brampton
PETERBOROUGH	all	Peterborough
PRESCOTT	all	L'Orignal
RUSSELL	Whole County in- cluding Cumberland	Russell

<u>County or Regional Municipality</u>	<u>Part</u>	<u>Location of Office</u>
SIMCOE	all	- - -
WENTWORTH	all	Hamilton
YORK	all, including Metro	Toronto (City Hall)

2. DISTRICTS AND REGIONAL DISTRICTS

<u>District</u>	<u>Part</u>	<u>Location of Office</u>
ALGOMA	all	Sault Ste. Marie
COCHRANE	all	Cochrane
KENORA	all	Kenora
MANITOULIN	all	Gore Bay
MUSKOKA	all	Bracebridge
NIPISSING	all	North Bay
PARRY SOUND	all	Parry Sound
RAINY RIVER	all	Fort Francis
SUDBURY	all	Sudbury
THUNDER BAY	West part	Thunder Bay (formerly Fort William)
--ditto--	East part	Thunder Bay (formerly Port Arthur)
TIMISKAMING	all	Haileybury

(3) Title Searching

I Introduction

(a) Purpose of Search

Most searches in the registry and land titles offices are made by surveyors or solicitors.

The surveyors search is intended only to determine the name of the last registered owner, subdivision plans, documentary survey evidence, by-laws, affidavit of surveys monuments planted and any instruments or plans entered or registered in the registry or land titles offices after the Crown patent which affects surveys. The solicitor's search is intended not only to determine who owns the land but also the condition of the owner's title and the interests any other persons may have which would affect the owner's title to his land. The Assessor's purposes are dealt with at the end of this section.

(b) Copies of Registered Plans

Copies of registered plans should be made exactly the same as the original filed in the registry or land titles office. This means that all certificates and consents must be copied as they appear on the original. Where colours have been used on the original it is essential that the same colours be used on the copy.

Because of the use of colour on originals, it is often advisable to make a tracing of the original rather than to attempt to use photographic copy.

II. Searches Under the Registry Act

(a) The Abstract

Where a search is made of the lands registered under the Registry Act, it is essential that the searcher should know the lot and concession affected by any registered instruments to which he was a party. Using the abstract, particularly if the person's name should happen to be Smith or some other very common name, could be a very complicated matter.

Having determined the location of the property, ask the registrar or one of his assistants for the abstract index for the lands to be searched.

After the abstract index has been obtained, open the book at the page where the first entries are made. This is necessary in order to determine whether or not the lands have been patented by the Crown. The patent is the first entry on your abstract.

Follow the right-hand column of the page under heading 'Quantity of Land' until you find or can identify a description of the lands with which you are particularly concerned which contains the description in the instrument through which the lands or a part are conveyed.

Note in the respective columns in your abstract the instrument number, the kind of instrument, its date, date of registration, the grantor and the grantee.

Taking the grantee's name, follow down the grantors column and see if, as a grantor, he has disposed of the property or any part thereof. If the grantee does not

appear to have disposed of his property or any part thereof by the time you have arrived at the final entry in the abstract index it is advisable, before coming to the conclusion that he is the last registered owner, to ask the registrar if there are any outstanding instruments affecting the land which have been registered but not yet entered in the abstract index. This is very important because the time lag between the date on which an instrument is registered and the date upon which the registrar enters the instrument in the abstract index may vary from a period of time amounting to a few days or perhaps two or three weeks, depending upon the volume of business in the office and the ability of the registrar's staff to cope with it. If the grantee's name appears in the grantor's column as having disposed of all or part of his land, note on your abstract the instrument and all the details connected therewith and then continue the search by taking the new grantee's name and following down the grantor's column to discover whether or not he has sold any part of the lands granted. This process must be continued until all of the lands have been accounted for.

If the transactions are numerous it is advisable to draw a diagram and to plot thereon the various instruments and the lands they affect.

(b) Copying Instruments

(i) In each ordinary instrument granting title in fee simple or otherwise, there are several parts as follows:

1. Registered date and number.
2. Date of Instrument.
3. Parties concerned.

These persons are referred to as the parties of the first part, second part, third part, etc., and they are defined as Grantor, Grantee, or joining with, etc.

4. The Recital.

This part states the reason and authority by which the parties, above defined, act as, e.g. Grantor, and in whom the title is vested.

5. The consideration or monies.

6. The description of the lands transferred, conveyed or granted.

7. The conditions of the Grant and the limitations of the title.

8. Executions of Signatures of the Grantors and witnesses and their seals.

9. Affidavits and special consents.

(ii) The parts of the instrument to be copied for the purpose of assessment are:

1. Number and Registered Date.
2. Instrument Date.
3. The several parties and their designations or capacities;

E.G. 1st part. John Jones of Sarnia, Grantor,
2nd part. Paul Brown of St. Thomas, Grantee,
3rd part. Maria Jones of Sarnia, wife of John
Jones, Grantor.
4th part. Lucy Brown of St. Thomas, wife of
Paul Brown, Grantee.

4. That part of the instrument stating in whom
the title is vested;

E.G. The parties of the 1st and 3rd part doth hereby
Grant to the parties of the 2nd and 4th part as joint
tenants and not as tenants in common.

5. The description - as follows:

Being composed of that part of the North East
Quarter of Lot 10, Concession 5, Township of Dunwich,
County of Elgin, etc., to the end of the description.

The description will be copied using certain
abbreviations: Con. - Concession, 1st - First,
N'ly - Northerly, N. 10° 30' W. instead of writing out
the bearing; also where feet and inches are used 562' 10".

Each course will be a new paragraph.

(c) Searching Hints

Search the Abstract Index back to the
Crown to make sure that all registered plans are noted.

Note all certificates of arrears of taxes,
and redemption certificates.

Note all Final Foreclosures of mortgages.
One of the parties will be given ownership under the order.

Note where tenants in common Quit Claim
their interest to a remaining tenant in common. This action
vests the title in the remaining tenant or tenants.

Note whether all grants given in Trust are
absolute or conditional, etc.

Grants to schools, churches, lodges, etc., are sometimes subject to reversion to the original owner when no longer used for their original purpose.

Note all letters which form part of the instrument numbers. G.R. means general register. All wills are filed as such.

The registrar uses certain abbreviations in the Abstract Index.

G. - Grant
Mort. - Mortgage
B. & S. - Bargain and Sale
D.M. - Discharge of Mortgage
A.M. - Assignment of Mortgage
F.O.F. - Final Order of Foreclosure
Red. Cert. - Redemption Certificate
C.T.A. - Certificate of Tax Arrears
Conv. U.P.S. - Conveyance under power of sale

See County Atlas as guide to searching lots badly broken up, a copy of which is usually found in each Registry Office.

Obtain the date of patent of lots surveyed under sectional system (necessary in defining half lot lines).

Find out the status of the occupants of unpatented lands, (Whether a locatee, holder of permit, holder of license of occupation, squatter, etc.).

Be sure to look well back into the abstract for instruments relating to roads.

Be sure to get the descriptions of parcels excepted from the general description of the lot, particularly of cemeteries, churches, schools, and gravel pits. To find these it is usually necessary to examine the abstract back to the first entry, as sometimes recent instruments purporting to deal with the whole lot, omit mention of excepted

parcels that were mentioned in earlier instruments dealing with the same lands.

Be sure to note whether plural grantees are joint tenants, tenants in common, or etc.

Copy all plans and sketches attached to Instruments on a separate sheet of paper or on the back of the Search Form.

Start each clause of the particular description on a new line.

(d) Crown Lands Forfeited

All lands in organized areas are subject to a Municipal Property Tax, and in unorganized areas to a Provincial Lands Tax.

All lands subject to tax may be forfeited by non-payment and in each case, a certificate of forfeiture is filed by the tax collecting authority in the Local Registry Office or Land Titles Office when the time limit for forfeiture has arrived.

All lands for which a certificate of forfeiture is filed is subject to a period of 13 months for redemption before re-sale.

In the case of lands being forfeited to the Crown and subject to the Provincial Land Tax, these lands may not be reserved as Crown Lands unless the period of redemption has elapsed. After the period of redemption has elapsed the land is vested in the Crown and may be dealt with as unpatented Crown Lands.

III. Searches Under the Land Titles Act

Searches under The Land Titles Act are made with the same

object in mind as those made under The Registry Act, that is to say, the determination of the name of the last registered owner and the description of the land which he owns.

Since the ultimate record of ownership in a land titles office is the parcel register, it is obvious that the information required must be obtained therefrom. The problem of locating a particular parcel may be approached in various ways.

(a) First Registration Book

By knowing in advance the lot number and concession, township or lot number and registered plan it is possible by using the first registration book, which is sometimes referred to as the patents book, to locate the original parcel number assigned to the lands for which a search is required. By commencing with the original parcel number it is then possible to trace the title to the land through various transactions to the present time. Some land titles offices maintain a card index system of all the land within the jurisdiction of the office which is shown according to the township, lot, concession, registered plan, etc.

The searcher will find from experience in dealing with land titles offices, that the quickest and easiest way to commence a search is to approach the Local Master and tell him that he wants to make a search covering a particular lot and concession, township, etc. Since most Masters of Title and their assistants are reasonably obliging people, they will usually help by turning up the particular parcel one wants to search in far less time than one could possibly find it oneself. This is based on the idea that the master and those who work with him are far more familiar with the internal operations of the office than any outsider.

(b) Information to be Copied

1. Parcel Number. This number is the number of the parcel which is the subject of the search. The blank space immediately preceding the parcel number is intended for the use of the words 'remainder of' where applicable.
2. Original Parcel Number. This information is to be found usually in the upper left-hand margin of the parcel register page and is the parcel number which applied to the land at the time of first registration. The original parcel number should be entered in the space. Where the land has formed part of intervening parcels you will find noted that it was "recently" parcel or parcels depending on the number of times the land has been re-entered in the register. This information should also be added in this space after the original parcel number.
3. In the register for_____. This space is provided for the name of the particular set of register books in which the parcel number (Item 1) is entered.
4. Date searched. This is the date upon which the search is made. This item is very important because the title to land and the conditions which may influence a persons title to a parcel of land is subject to change.
5. Township. This means the geographic township in which the lands are located.
6. Lot or section. This means the lot or if a geographic township is of the sectional type, state whether or not it is the north-east, south-east, south-west, or north-west quarter of the section and its number.
7. Plan or concession. In this space enter the number of the concession or the number of the subdivision plan. If the plan is registered under The Land Titles Act the number will be preceded by the letter "M". In this connection it is well to remember that in the northern part of the Province certain land titles offices, particularly Cochrane, subdivision plans were registered prior to the setting up of the territorial district and the establishing of a land titles office for the area. The District of Cochrane was composed of parts of the District of Algoma and Temiskaming. Plans which were registered prior to the formation of the District retain their original number but as a mark of distinction have added thereafter the name of the District from which they originally came, as for example, plan M45 (Algoma).
8. The said land is vested in fee. In the space following

this heading enter the name of the owner or owners and if there are more than one owner state the nature of the joint ownership, that is, joint tenants, tenants in common, etc.

9. In the (Owner's address). Copy the owner's address as it is given in the register.
10. Under. This space is provided for the registration number of the instrument which authorized the Master of Titles to enter the name of the registered owner on the register as being the owner of the parcel. In addition to the number state the type of instrument, that is, whether it was letters patent, a transfer, a will, etc. Do not confuse with parcel number.
11. Dated. This is the date of the instrument.
12. Registered. This is the date upon which the instrument was registered. While registration is not complete until an entry is made on the register, the effect of registration is dated back to the day upon which the instrument was presented for registration.
13. With a. In this space insert the kind of title the owner has with respect to the lands, that is,
 - (a) absolute,
 - (b) qualified, or
 - (c) possessory.
14. Title. In this space state if the title is for the surface rights, mining rights, or leasehold. The foregoing will be stated definitely in the register.

Be certain to copy all cautions, notices, inhibitions and easements which in any way affect the land.

The description must be copied exactly as it appears in the register. If it appears from the register that a survey and plan was attached to the transfer it will be necessary to ask for the transfer by number and to make a copy of the plan attached thereto. With the introduction of the loose-leaf type register in the land titles offices it is now customary, unless the plan is too large, to incorporate a copy in the register.

IV. Title Searching and the Assessor

Title searching for assessment purposes is not too difficult, although care and some judgment are required. Using as his basic information the previous year's Assessment Roll and Appraisal Cards the Property Searcher simply has to turn to the desired lot in the Abstract Index (if the Registry Office is involved) or the First Registration Book (if the Land Titles Office is used), and starting at the latest registration, work back through the column of Grantees until he encounters the name of the assessed party, on one of the Grants of Land. This is the Deed whereby this parcel was acquired. In this manner, he can determine whether the property was acquired in several pieces and, by examining the list of Grantors, he can check if any portions have been sold subsequently. Once he has selected the documents he requires, he can obtain a description of the land held by each person on the Roll. When each person assessed has been accounted for, it can be determined whether any land is left over. If so, the Property Searcher can start at the Crown Grant and isolate each parcel as it is subdivided, and so determine the last registered owner for each portion. In this way, land that has never been assessed can be discovered and the owner identified.

In regions with good records, the Property Searcher's job is simplified but not eliminated. He should familiarize himself with the information on file at his office, and so avoid unnecessary effort and expense. However, the Abstract Index should still be checked, as errors tend to creep into records over the years.

Most of the information will be in the form of metes and bounds descriptions; the Property Searcher should be able to sketch the property lines onto work sheets without any difficulty. (He is concerned only with land description - such problems as clear chain of title, barring of dower rights, etc., that occupy so much time in most title searching, are of no significance in a Mapping Programme for assessment purposes). Preprinted work sheets, showing the lot lines, north arrow and a title block or heading may be prepared; these will be filed after the Draftsman has finished with

them, and will provide a reference in cases of doubt that may arise later. If difficulty is encountered with a description, the Property Searcher should obtain a copy and let the Draftsman resolve the problem, possibly with the aid of aerial photographs. Plans of surveys should always be obtained, as these frequently show a good deal of surrounding detail, and often help to 'tie together' properties with vague descriptions.

Comparison of Land Registration Systems in Ontario

<u>Registry System</u>		<u>Land Titles System</u>
Name of Office	The Registry Office for the Registry Division of the County	The Office of Land Title at (Toronto)
Official in Charge	Registrar	Master of Titles, or Local Master of Titles
Term Used for Registration	Registered	Filed
Principal Record Book	Abstract Index	Register
Classification of Land Entries	By reference to township lot in a concession of a county or municipality, or to a lot on a registered plan of subdivision	By parcel number
Documents	Not checked by Registrar before accepted for registration	Carefully checked by Master of Titles before being accepted for filing
Title Search	Forty-year chain of title searched	Outstanding entry on most recent parcel register
Certificate by Officials in Charge	Only a Registrar's Abstract certifying list of all entries on the abstract index affecting a particular piece of land	Certificate of Ownership, or Certificate of Ownership of Charge
Forms	Deed – grantor to grantee Mortgage – mortgagor to mortgagee Discharge of Mortgage Assignment of Mortgage Required on all instruments except Discharge of Mortgage	Transfer – transferor to transferee Charge – mortgagor to mortgagee Cessation of Charge Transfer of Charge No seals required
Legal Seals		
Affidavits	Affidavit of Execution; Affidavit of Legal Age and Marital Status by one of executing parties; and on instruments conveying title, Land Transfer Tax Affidavit under Land Speculation Tax Act.	Affidavit of Execution which requires witness to swear executing parties were of legal age; Affidavit of Legal Age and Marital Status taken by all executing parties; and on instruments conveying title, Land Transfer Tax Affidavit Affidavit under Land Speculation Tax Act

Source: Swartz, E.E., Procedures for the Legal Secretary, p. 58., Holt, Rinehart and Winston.

Absolute Title

The registered owner of land registered with an absolute title under The Land Titles Act has an absolute right to the property against all the world, subject only to any encumbrances entered on the register and to certain liabilities set out in Section 91 of The Land Titles Act.

Abstract

A history of past dealings and a summary of the various instruments registered in the registry office which affect the title to a particular parcel of land. The Registrar of Deeds is required by law to furnish on request, and upon payment of his proper fees, a certified abstract of title for any parcel of land registered in his office.

Abstract Index

One of the books of office kept in the registry office under the authority of The Registry Act in which the registrar is required to enter under a separate and distinct heading each lot or part of a lot as it is patented by the Crown or as defined on any registered plan of subdivision. He is also required to enter in the index every instrument which mentions each lot, the names of every party to the instrument, its nature, the registration number and the day, month, or year of its registration, the consideration and a summarized description of the land which is sufficient to identify its location.

Adverse Possession

An occupation of land inconsistent with the right of the true owner. If the adverse possession continues the effect, at the expiration of the period prescribed in The Limitations Act, is that the right of the legal owner to repossess his lands is barred. The person in adverse possession gains a new possessory title which cannot, however, exceed in extent or duration the interest of the former owner. The foregoing does not apply to lands registered under The Land Titles Act which specifically states that no form of title may be acquired which is derogatory to that of the registered owner by any length of possession.

Agreement of Sale

A contract by which one party agrees to sell and another agrees to purchase. Agreements of this type are occasionally registered under The Registry Act. A caution may be lodged under The Land Titles Act claiming an interest by reason of an agreement of sale.

Alienation

Power of an owner to dispose of his interest in real or personal property. Alienation may be:

- (a) voluntary by conveyance or will, or
- (b) involuntary by seizure under a judgment order for debt or by expropriation.

Appurtenances

All the rights which go with property although not within the limits described in a deed or in the parcel register, as for example, a right-of-way or an implied easement across another person's land.

Assignment of Mortgage

The transfer of the right or interest contained in the mortgage to another.

Bundle of Rights

The rights of fee simple or freehold ownership. These rights include: the right to use, sell, lease and to enter the property or to give it away. It also includes the right to refuse to take any of the above actions.

By-Laws

Rules made by some authority subordinate to the legislature in the regulation, administration or management of a certain district, property, undertaking, etc., and binding on all persons who come within their scope. Thus, every Company Incorporated either by the Province of Ontario or the Dominion of Canada has a right to make by-laws respecting its internal operations. Municipal Corporations have powers granted to them by the legislature to make by-laws for various purposes. A municipal by-law, in order to be valid, must have a specific statutory authority. Certain municipal by-laws are registered.

- (1) Money by-laws must be registered within 4 weeks after the passing of the by-law by the Municipal Council.
- (2) By-Laws affecting land
 - (a) passed since March 29, 1873, closing or opening streets, roads or highways on private property must be registered before becoming effective in law.
 - (b) passed before March 29, 1873, under which any street, road or highway has been opened on private property may be registered by depositing a certified copy of the by-law.

- (3) A by-law, proclamation, Order-in Council, Order of the Ontario Municipal Board, and any other instrument by which each village, town or city becomes incorporated or the boundaries of any municipality enlarged, diminished or altered is to be registered by the municipality passing or procuring the same.
- (4) A by-law confirming an agreement between the Councils of adjoining municipalities with respect to the maintenance and repair of any boundary line road.
- (5) A by-law designating any area within a municipality as an area of subdivision control under The Planning Act.

Capitalization

The process whereby a series of anticipated future annual installments of income is converted into a present worth by the application of a capitalization rate.

Capitalization Rate

It is a conversion factor that is applied to the income stream to convert it into an indication of the market value of a property. It is the rate, commensurate with the risk presented, at which a future income stream is discounted to a present worth.

Caution - A Warning

- (1) Cautions are registered in the registry office
 - (a) under The Devolution of Estates Act by the Executor or Administrator of the estate of a deceased person giving notice to all persons concerned that it may be necessary to sell the real property of the deceased.
 - (b) under The Succession Duty Act by the Treasurer of Ontario claiming succession duties on any real property belonging to the estate of a deceased person.
- (2) A caution may be lodged by any person under The Land Titles Act
 - (a) who claims any interest therein, and
 - (b) by the Local Master of Titles where a description of land is in error.

Certificate of Charge

A certificate issued by a Land Titles Office to the owner of a charge (mortgage) against registered lands.

Certificate of Discharge of Mortgage

A certificate granted either for the payment in whole or in part of a mortgage against lands under The Registry Act. It constitutes a release and reconveyance of the lands which it affects.

Certificate of Ownership

A certificate issued under The Land Titles Act containing a copy of the registered particulars of certain piece of land.

Certificate of Title

- (1) A certificate issued under The Land Titles Act setting forth the present title to a parcel of land and any encumbrances or other conditions which appear on the register to affect the title to the land as of the date of certification by the proper Master of Titles.
- (2) A certificate issued by the Director of Titles under The Certification of Titles Act and registered in the proper registry office stating that the title to the land described therein is absolute and indefeasible subject only to the qualifications mentioned therein.
- (3) A certificate issued by a Judge of the Supreme Court of Ontario under The Quieting Titles Act which is registered in the proper registry office and in which the title therein mentioned is deemed to be absolute and indefeasible from the date of the certificate.

Certification of Titles Act, The

An Act of the Legislature whereby the Director of Titles upon the application of an owner in fee simple may have the title to his land investigated and certified. After the application has been filed, notices are sent to all parties concerned or interested and when the time given to file counter-claims has elapsed, the Director of Titles may certify the title of the applicant and register the certificate in the proper registry office. Following registration, the title of the owner of the land described therein is absolute and indefeasible. The Act applies only to lands registered under The Registry Act.

Charge

In property law a charge is a form of security for the payment of a debt or the performance of an obligation. Under The Land Titles Act, land may be charged by the registered owner with the payment of any principal sum of money. A charge is, for all practical purposes, the same as a mortgage under The Registry Act except that the legal title remains in the registered owner.

Condominium Common Elements

This means all the property except the units.

Condominium Common Expenses

This refers to the expenses involved in the performance of the objects and duties of a corporation and any expenses specified as common expenses in a condominium declaration.

Condominium Common Interests

This means the interest in the common elements which is attached to, or appurtenant to a condominium unit.

Condominium Corporation

This refers to a corporation incorporated under The Condominium Act.

Condominium Owner

This means the owner or owners of the freehold estate or estates in a unit and common interest, but does not include a mortgagee unless in possession.

Condominium Unit

This refers to the part of the land included in the description and designated as a unit by the description. It comprises the space enclosed by its boundaries and all the material parts of the land within this space at the time the declaration and description are registered.

Contract Rent

The actual payments tenants make for their use of the property of others.

Conveyance

- (1) A method of transferring property.
- (2) An instrument other than a will whereby an interest in property is transferred from one person to another.

Corporation

A succession or collection of persons having, in the estimation of law, an existence, rights and duties distinct from those of the individual persons who from time to time form it. It has perpetual succession, a name and a common seal. See also municipality.

Corporeal

That which is accompanied by physical possession.

Covenant

An agreement creating an obligation contained in a deed. It may be positive, stipulating the performance of some act, or the payment of money or negative and restrictive, forbidding the commission of some act. A covenant is said to run with the land when it touches and concerns the land and is negative in character.

Curtesy

A widower's life estate in his wife's real property.

Highways Register

A special register maintained in each land titles office which is intended to provide a record of all plans filed or registered by the Minister of Transportation and Communication under the Highway Improvement Act. The form of entries are governed by a procedural guide issued under the authority of

the Director of Titles. All of the various types of plans and the procedure to be followed by the master in each case are set out under the letter designating each type of plan. For example, plan type "A" is a Land Plan whereby the Ministry expropriates land from private owners.

Deposit

- (1) An instrument or any document left with the registrar under Part II, The Registry Act for safe-keeping.
- (2) An instrument or document left with the registrar for the purpose of registration under The Registry Act.

Director of Titles

An official of the Ministry of Consumer & Commercial Relations appointed under The Land Titles Act, who has charge of the administration of legal matters in the land titles offices throughout the Province. His powers and duties are set out in The Land Titles Act. He also has powers and duties under The Certification of Titles Act and The Boundaries Act.

Discharge

To release a person from an obligation. Under The Land Titles Act to release registered land from being charged with the payment of a sum of money.

Dominant Tenement

The land owned by the possessor of an easement.

Dower

A life interest given by common law to a wife in one-third of any freehold land which her husband owned at any time during their married life. Dower does not become an estate in land until the death of the husband with the wife as the survivor.

Easement

A right enjoyed by the owner of land over the lands of another. An easement must exist for the accommodation and better enjoyment of the land to which it is annexed. The dominant tenement is the land owned by the possessor of the easement and the servient tenement is the land over which the right is enjoyed. An easement may be created apart from the ownership in land by express grant as in the case of an easement granted to the Bell Telephone Company and the Hydro Electric Power Commission.

Economic Rent

The current rental value of the property is the market.

Encumbrance

A charge or liability against land, for example, a mortgage or a charge.

Equitable

- (1) That which is fair.
- (2) That which arises from a liberal construction of application of a legal rule or remedy. - - -

Equity of Redemption

The equitable estate or interest of a mortgagor in his mortgaged land in respect of which a right to redeem subsists.

Escheat

The reversion of estates to the state whenever a person dies intestate without any known heirs who are eligible to receive the property under the laws of descent.

Estate

- (1) An interest in land.
- (2) Property left by a deceased person.

Expropriation

The compulsory taking from a person, on compensation made, of his private property for the public good.

Fee Simple

An estate of pure inheritance which is the greatest estate a subject of the Crown can possess and for all practical purposes amounts to absolute ownership.

Fee Tail

An estate of inheritance in which the line of heirs is cut down or restricted to a particular line of descent.

First Registration

A term used in Land Titles Offices to indicate the first entry of lands on the parcel register that were previously registered under The Registry Act.

Foreclosure

An action taken by the mortgagee when the mortgagor has defaulted or failed to pay off the mortgage debt within the proper time. See Order of Foreclosure.

General Register

One of the books of office to be kept by the registrar for the purpose of recording wills, probates, etc.

Graduate Lease

A lease which provides for periodic increases or decrease (unusual) in the rent over the years of the lease.

Grant

The assurance or transfer of the ownership of property, by an easement, or restrictive covenant, an instrument in writing without the delivery of possession. The person making the grant is called 'grantor' and the person to whom the grant is made is called the 'grantee'. It commences with the words 'to have and to hold, etc.'

Ground Lease

A lease for vacant land upon which the tenant may erect improvements.

Habendum

The clause in a conveyance which indicates the estate to be taken by the grantee.

Indenture

Originally a document written in duplicate on the same parchment or paper, and divided in two by cutting through a wavy line. The two parts could be fitted together as proof they were genuine. The term today applies to any sealed agreement or contract.

Instrument

A legal document.

Interest

- A person is said to have an interest in a thing when he has rights, titles, advantages, duties, liabilities connected with it, whether present or future, ascertainable or potential, provided they are not too remote.

Intestacy

The failure to dispose of property by will.

Joint Tenancy

The ownership of land in common by more than one person where there is a right of survivorship. Where 'a' and 'b' own land as joint tenants and 'a' dies; 'b' automatically becomes the sole owner.

Lease

A conveyance or grant of the possession of property for a term of years or other period specified or unspecified usually with the reservation of a rent. The person who grants the lease is called the lessor and the person to whom it is granted the lessee. A lease must be for a lesser estate than the lessor has in the property otherwise it is a conveyance and not a lease.

Leased Fee

A property held in fee with the right of use and occupancy conveyed under lease to others. A property consisting of the right to receive rentals over a period of time and to ultimate repossession.

Lease and Release

An absolute method of conveying freehold land in which the vendor executed a lease to the purchaser for a year following which the vendor released his reversion to the purchaser.

Leasehold

Lands held under the terms of a lease.

Lessee

One who possesses by lease the right of use of the property of another.

Lessor

One who conveys by lease the right of use of real estate.

Lien

The right to hold the property of another as security for the performance of an obligation.

Local Master of Titles

A person appointed by the Lieutenant-Governor in Council under The Land Titles Act who is in charge of the administration of a land titles office situated in any part of Ontario outside the County of York. In Toronto, the person in charge of the land titles office for the City of Toronto and the County of York is known as the Master of Titles.

Market Value (for assessment purposes)

Market value is the amount that the land might be expected to realize if sold in the open market by a willing seller to a willing buyer.

Master of Titles

The person appointed by the Lieutenant-Governor in Council under The Land Titles Act who is in charge of the administration of the land titles office situated in the City of Toronto.

Metes and Bounds

The description of a piece of land from point to point. The word 'metes' is from the Latin 'meta' meaning a point or goal and the word 'bound' means a line between the two points. A written description of this type commences at a known point, referred to as the 'point of commencement', then extends from point to point around the property described until it terminates at the point of commencement.

Mortgage

Derived from the Norman French words 'mort' meaning dead, and 'gage' meaning a pledge. Originally a pledge under which the creditor took the rents and profits for himself so that it was dead or profitless to the debtor. Under The Registry Act, it constitutes a conveyance of the legal title to the land by the owner (mortgagor) as a form of security for the payment of a sum of money to the mortgagee over a period of years, the owner retaining possession of the land and an equity of redemption. After the mortgage is paid off an instrument is registered called a 'discharge of mortgage' which has the effect of reconveying the title to the mortgagor.

Net Lease

The lessee pays the stated rent plus some costs of operation which may include utilities and interior maintenance while the lessor may pay the realty taxes, insurance, structural maintenance and other costs.

Net, Net Lease

A lease under which the lessee undertakes to pay the leased rent plus all the costs of operating the property.

Order of Foreclosure

A command or direction of the Court placing all of a mortgagor's equity of redemption in the hands of the mortgagee where the mortgagor has failed to live up to the mortgage contract.

Ownership

The right to the exclusive enjoyment of a thing. Strictly, it denotes the relation between a person and any right that is vested in him. Ownership is either absolute or restricted.

Absolute ownership involves the right of free as well as exclusive enjoyment including the right of using, altering, disposing of, or destroying the thing owned. Absolute ownership is of indeterminate duration. Land is in strictness not subject to absolute ownership because it cannot be destroyed and because, in theory, all land is ultimately held of the Crown.

Restricted ownership is ownership limited to some extent as for example where there are several joint owners, or a life tenant, or where the property is charged with the payment of a sum of money or subject to an easement. Ownership is always subject to the rule that a man must so use his property as not to injure his neighbour.

Parcel

- (1) Parts or portions of land.
- (2) Under The Land Titles Act, a parcel is an entry of ownership or of the title to land in the register.

Parcel Register

The principal book of office kept under The Land Titles Act in which is entered as a separate entry for each, called a 'parcel', the authentic record of the ownership of land, the owner's name and any charge, encumbrances or conditions to which the owner's title is subject and also a description of the land affected. In most land offices the area covered is too large to be handled effectively by one set of register books, therefore, it is customary to subdivide the geographic area under the jurisdiction of the particular office and to set up registers in accordance with the names assigned to the particular geographic subdivisions. Hence it is common to find that, for example, in the District of Nipissing, one set of registers will be called the Register for Nipissing and another, which deals with land in and around the City of North Bay, called the Register for Widdifield and Ferris. The name of the parcel register must be used in conjunction with the parcel number in order to definitely identify the particular parcel. The parcels are entered numerically in the register for each subdivision without reference to township, concession, lots, etc. Therefore, parcels which follow one another in numerical sequence may be in various parts of the District and many miles apart.

Partnership

The relationship which exists between persons carrying on business in common with a view of profit, which is not incorporated as a company, and in which each participant or partner is liable for the debts of the partnership to the whole extent of his property.

Personal Property

Movable property; goods and chattels such as automobiles, household furniture, appliances, clothing and other objects of a personal nature.

Plan Index Book

An index book kept in the registry office in which are entered all subdivision plans registered in the office.

Possessory Title

A form of title used under The Land Titles Act where land may be entered on the register without any extensive preliminary examination of the owners title to land, not to be confused with adverse possession dealt with elsewhere. It differs from an absolute title in that the title prior to first registration is not officially examined nor is it assured. Any person dealing with a possessory title in these circumstances would have to examine the title down to the date of first registration and beyond as though dealing with lands registered under The Registry Act. After 10 years from the date of registration, the owner of a possessory title may apply to the proper Master of Titles to have his name entered as the owner with an absolute title at which time the master will investigate the title and enter the owner with an absolute or qualified title as the case may be.

Prescription

The acquisition of easements or profits by a long-time user.

Proper Master of Titles

A general term used in The Land Titles Act to indicate the Local Master of Titles or the Master of Titles, as the case may be.

Property

That which is capable of ownership. The highest right a person can have in any thing. Property is divided in two classes:

- (a) Personal Property, and
- (b) Real Property.

Purchasing Power

The capability and capacity of the consumer to procure a desired object by using a medium of exchange.

Qualified Title

Under the Land Titles Act a title to land registered subject to a specific qualification as to any estate, right or interest which is set out and described in the parcel register. Qualified titles are very rare and arise where an owner has made an application for an absolute title and in the process of investigation, it is found that the owner's title is subject to certain specified exceptions.

Quit Claim Deed

A deed drawn up for the purpose of releasing any right, title, or interest which the Grantor may have in the property described therein. It usually contains recitals which set forth the nature of the Grantor's claims or interests in the property.

Real Estate, Real Property (for assessment purposes)

"Land", "real property", and "real estate" include:

- (i) land covered with water,
- (ii) all trees and underwood growing under land,
- (iii) all mines, minerals, gas, oil, salt quarries and fossils in and under land,
- (iv) all buildings or any part of any building and all structures, machinery and fixtures erected or placed upon, in, over, under or affixed to land,
- (v) all structures and fixtures erected or placed upon, in, over, under or affixed to a highway, lane or other public communication or water, but not the rolling stock of a transportation system.

Rectification of the Register

Where, under The Land Titles Act, it becomes evident that the entry of ownership of a parcel of land in the register is erroneous or a description of land in the register contains errors, the errors may be rectified by the Proper Master of Titles upon application of the owner.

Reference Plan

A plan of survey which may, in certain circumstances, be required by the proper Master of Titles where a person applied for the registration of a transfer under The Land Titles Act. A reference plan is not registered as in the case of a subdivision plan. It is deposited for record.

Registrar

An official appointed by the Lieutenant-Governor in Council under The Registry Act who is responsible for the administration of a registry office. His duties include:-

- (a) administration of the business affairs of the office
- (b) accepting instruments affecting land within the jurisdiction of his office for registration
- (c) maintenance of the books of office containing the records of instruments registered in his office
- (d) exhibiting instruments and books of office for the inspection of the general public, and
- (e) furnishing abstracts and copies of registered instruments affecting lands in his division.

Registration

To set down names, facts, instruments, dates, etc., formally and in writing.

- (1) Under The Registry Act an instrument is deemed to be registered as soon as the same is delivered either personally or by post to and received at the registry office during the official office hours by the registrar or some officer or clerk in his behalf. When an instrument is received and registered, it is stamped by the registrar with the date and time it was received and the number.
- (2) Under The Land Titles Act, registration is complete when an instrument is entered in the proper register. The particulars of registration are entered on the face of an instrument and signed by the proper Master of Titles and the time of receipt of the instrument is deemed to be the time of its registration.

Remainder

The interest of a grantee subject to a prior particular estate.

Restrictive Covenant

A covenant restricting the use of land.

Revaluation Lease

This type of lease is an attempt on the part of the lessor to participate in future property value increases. Normally, it provides for a periodic reassessment of the rent as specified in the lease.

Reversion

The interest in reconveyance remaining to a grantor after granting a particular estate.

Scarcity

Economic scarcity refers to the basic fact of life that there exists only a finite amount of human and nonhuman resources, which the best technical knowledge is capable of using to produce only a limited maximum amount of each and every good. Thus far, nowhere on the globe is the supply of goods so plentiful or the tastes of the populace so limited that every person can have more than enough of everything he might fancy.

Search

The act of carrying out an investigation to determine the ownership of land by examining the instruments or other records respecting title in the registry or land titles office for the area in which the land is situated.

Servient Tenement

Land burdened by a right such as an easement.

Statute Law

Acts of the Parliament of Canada or of a Provincial Legislature, particularly a public Act. Statutes are of the following kinds:

- (1) declaratory, when they do not profess to make any alteration in the existing law but merely to declare or explain what it is;
- (2) remedial, when they alter the common law;
- (3) amending, when they alter the statute law;
- (4) consolidating, when they consolidate several previous statutes relating to the same subject matter, with or without alteration of substance;

- (5) disabling or restraining, e.g., when they restrain the alienation of property;
- (6) enabling, when they remove a restriction or disability;
- (7) penal, when they impose a penalty or forfeiture. -

Subdivision Plan

A plan prepared by an Ontario Land Surveyor when land is surveyed and subdivided by the owner for the purpose of being sold or conveyed and which is registered in the proper registry or land titles office for the county or district in which the land is situated.

Tenancy in Common

Tenancy in common exists where two or more persons are entitled to land in such a manner that they have an undivided possession but several freeholds; that is, no one of them is entitled to the exclusive possession of any part of the land, each being entitled to occupy the whole in common with the others. It is distinguished from joint tenancy by the fact that on the death of any one of them, his share passes, not to the survivors, but to his heir and devisee, who then becomes tenant in common with the survivors.

Tenant

One who holds land. In theory, all owners of land are tenants and as such hold their land from the Crown.

In the proper sense of the word, a tenant is one who rents property from a landlord.

Tenement

A thing which is the subject of tenure or of being held or occupied.

Tenure

The mode of holding or occupying land. The rule is that no person except the Crown can be the absolute owner of land in Ontario. Land in the hands of the subject is held of the Crown. The possessor is merely a tenant. The manner of possession is called tenure and the extent of his interest is called an estate. The highest estate or interest which an owner may have in land is known as an estate in 'fee simple' which for all practical purposes is absolute ownership.

Term of Years

An estate or interest in land limited to a fixed number of years as in the case of a lease for one or more years.

Torrens System

A system which provides for the registration of the title to land rather than instruments which affect title, introduced in Australia by Sir Robert Torrens in 1858. Variations of the system were subsequently adopted in the rest of Australia, in Canada and in England. The System was introduced into Ontario in 1885 by The Land Titles Act and at that time applied only to the City of Toronto and the County of York. It was extended to the City of Toronto and the County of York. It was extended to apply to the territorial districts in 1887 and since that time has been made to apply to other sections of Ontario as well.

Transfer

The passage of a right from one person to another. Under The Land Titles Act when an owner desires to sell either all or part of his property to another he executes an instrument which is known as a transfer. When the transfer is presented to the proper master of titles for registration it has the effect of authorizing the master to change the entry of ownership in the parcel register accordingly. Registration is not complete until the transfer is entered on the parcel register. See Registration.

Trust

A relation or association between one person holding property and another person on whose behalf it is held. The holder of the property is the trustee and the beneficial owner is the person on whose behalf the property is held. The trustee is the legal owner of the property and the beneficial owner has only a right in person against the trustee (see trustee).

Trustee

A person who holds property for the benefit of another. The prime duty of a trustee is to carry out the terms of the trust and preserve safely the trust property. He must use the utmost diligence in discharging the trust duties, and in general act honestly and use as much diligence as a prudent man of business would exercise in dealing with his own affairs, otherwise the trustee may be personally liable for breach of trust.

Utility

The satisfaction that someone receives from consuming commodities.

Value

Value is the relationship between a thing desired and a potential purchaser. It is the present worth of future benefits arising from ownership.

Appendix B:

LIST OF CASES

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ABBREVIATIONS

All E.R.	All England Law Reports
C.A.	Court of Appeal (Ontario)
D.L.R.	Dominion Law Reports
Ex. C.R.	Canada Exchequer Court
O.L.R.	Ontario Law Reports
O.R.	Ontario Reports
O.W.N.	Ontario Weekly Notes
Q.B.	Queen's Bench
S.C.R.	Supreme Court Reports
S.C.C.	Supreme Court of Canada

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